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A COLLECTION  
OF  
IMPORTANT ENGLISH STATUTES,

SHOWING THE PRINCIPAL CHANGES IN  
THE LAW OF PROPERTY;

TOGETHER WITH SOME OTHER

ENACTMENTS OF COMMON REFERENCE.

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CAMBRIDGE:  
1880.

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## PREFACE.

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IN preparing the following pages an attempt has been made to embody in a convenient form the most important of those English Statutes, which, passed before the establishment of the Colonies, form to-day part of our Law, and such subsequent enactments as have had, through their direct or indirect adoption, the greatest influence on the case law of this country.

The more part of these Statutes, or portions of Statutes, bear on the subject of the holding and transfer of property; the remainder will be found to be some of the most important of those which relate to the subjects of crimes, evidence, and procedure.

While this collection has been made primarily as a reference-book for the use of members of the Harvard Law School, it is hoped that others may find it of service in their studies.

The edition of the Statutes at Large, used in the preparation of this book, is that of Danby Pickering Esq<sup>re</sup>.

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CAMBRIDGE, November, 1880.

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CHRONOLOGICAL TABLE  
OF THE  
SOVEREIGNS OF ENGLAND.

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SOVEREIGNS.	Commencement of Reign.	Year of Death.	Years of Reign.
William I.	December 25, 1066	1087.	21
William II.	September 26, 1087	1100.	13
Henry I.	August 5, 1100	1135.	36
Stephen	December 26, 1135	1154.	19
Henry II.	December 19, 1154	1189.	35
Richard I.	September 3, 1189	1199.	10
John	May 27, 1199	1216.	18
Henry III.	October 28, 1216	1272.	57
Edward I.	November 20, 1272	1307.	35
Edward II.	July 8, 1307	1327.	20
Edward III.	January 25, 1327	1377.	51
Richard II.	June 22, 1377	1399.	23
Henry IV.	September 30, 1399	1413.	14
Henry V.	March 21, 1413	1422.	10
Henry VI.	September 1, 1422	1471.	39
Edward IV.	March 4, 1461	1483.	23
Edward V.	April 9, 1483	1483.	..
Richard III.	June 25, 1483	1485.	3
Henry VII.	August 22, 1485	1509.	24
Henry VIII.	April 22, 1509	1547.	38
Edward VI.	January 28, 1547	1553.	7
Mary	July 6, 1553	1558.	1
Philip and Mary	July 25, 1554	..	4
Elizabeth	November 17, 1558	1603.	45
James I.	March 24, 1603	1625.	23
Charles I.	March 27, 1625	1649.	24
Commonwealth	January 30, 1649	1654.	5
Oliver Cromwell, Protector.	December 12, 1653	1658.	5
Richard Cromwell, “	September 4, 1658	1712.	2
Charles II.	May 29, 1660	1685.	37 *
James II.	February 6, 1685	1701.	4
William and Mary	February 13, 1689	1694.	6
William III.	December 28, 1694	1702.	8
Anne	March 8, 1702	1714.	13
George I.	August 1, 1714	1727.	13
George II.	June 11, 1727	1760.	34
George III.	October 25, 1760	1820.	60
George IV.	January 29, 1820	1830.	11
William IV.	June 26, 1830	1837.	7
Victoria	June 20, 1837	..	..

\* The regnal years of Charles II, are reckoned from the death of Charles I.

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## IMPORTANT ENGLISH STATUTES.

A.D. 1100–1874.

### LEG. REG. HEN. I. I.

VII. Et si quis baronum vel hominum meorum infirmabitur, sicut ipse dabit, vel dare disponet pecuniam suam, ita datam esse concedo. Quod si ipse preventus, vel armis vel infirmitate, pecuniam suam non dederit nec dare disposuerit, uxor sua, sive liberi, aut parentes, aut legitimi homines ejus, eam pro anima ejus dividant, sicut eis melius visum fuerit.

MAG. CART. REG. JOHAN. CAP. 27. [June 15th, A.D. 1215.]

Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum parentum et amicorum suorum, per visum Ecclesiae distribuantur; salvis unicuique debitibus que defunctus ei dedebat.

If any free-man shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by the view of the Church, saving to everyone the debts which the defunct owed.

MAG. CART. (9 HEN. III.). CAP. 32. [A.D. 1225.]

*Lands shall not be aliened to the Prejudice of the Lord's Service.*

Nullus liber homo decetero det amplius vel vendat alicui de terra sua quam ut de residuo terre sue possit sufficienter fieri domino feodi servicium ei debitum quod pertinet ad feodium illud.

No Freeman from henceforth shall give or sell any more of his Land, but so that of the residue of the Lands the Lord of the Fee may have the Service due to him, which belongeth to the Fee.

## CAP. 36.\*

*No Land shall be given in Mortmain.*

Non liceat alicui decetero dare terram suam alicui domui religiose ita quod illam resumat tenendam de eadem domo nec liceat alicui domni religiose terram alicujus sic accipere quod tradat illam ei a quo ipsam recepit tenendam. Si quis autem decetero terram suam alicui domui religiose sic dederit et super hoc convincatur donum suum penitus cassetur et terra illa domino suo illius feodi incurratur.

It shall not be lawful from henceforth to any to give his Lands to any Religious House, and to take the same land again to hold of the same House. Nor shall it be lawful to any House of Religion to take the Lands of any, and to lease the same to him of whom he received it. If any from henceforth give his Lands to any Religious house, and thereupon be convict, the Gift shall be utterly void, and the Land shall accrue to the Lord of the Fee.

STAT. MERTON. (20 HEN. III.). CAP. 9. [A.D. 1235.]

*He is a Bastard that is born before the Marriage of his Parents.*

To the King's Writ of Bastardy, Whether one being born before Matrimony may inherit in like manner as he that is born after matrimony, all the Bishops answered, That they would not, nor could not, answer to it; because it was directly against the common Order of the Church. And all the Bishops instanted the Lords, that they would consent, that all such as were born afore Matrimony should be legitimate, as well as they that be born within Matrimony, as to the Succession of Inheritance, forsoomuch as the Church accepteth such for legitimate. And all the Earls and Barons with one voice answered, that they would not change the Laws of the Realm, which hitherto have been used and approved.

52 HEN. III. CAP. 23. [A.D. 1267.]

*A Remedy against Accomptants. Fermors shall make no Waste.*

It is provided also, That if Bailiffs, which ought to make account to their Lords, do withdraw themselves, and have no lands nor Tene-

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\* For later Mortmain Acts, see 7 Edw. I. St. 2; 13 Edw. I. c. 32; 15 Rich. II. c. 5; 23 H. VIII. c. 10. §§ 1-5; 9 Geo. II. c. 36.

ments whereby they may be distrained ; then they shall be attached by their Bodies so that the Sheriff, in whose Bailiwick they be found, shall cause them to come to make their account.

II. Also Fermors, during their Terms, shall not make Waste, Sale, nor Exile of House, Woods, and Men, nor of any Thing belonging to the Tenements that they have to ferm, without special Licence, had by Writing of Covenant, making mention, that they may do it ; which Thing if they do, and thereof be convict, they shall yield full Damage, and shall be punished by Amerciament grievously.

#### CAP. 29.

*In what Case a Writ of Entry sur disseisin in the Post doth lye.*

It is provided also, That if those Alienations (where upon a Writ of Entry was wont to be granted) hap to be made in so many Degrees, that by reason thereof the same Writ cannot be made in the Form beforetime used, the Plaintiffs shall have a Writ to recover their Seisin, without making mention of the Degrees, into whose Hands soever the same Thing shall happen to come by such Alienations, and that by an Original Writ to be provided therefore by the Council of our Lord the King.

3 EDW. I. (WESTMINSTER I.). CAP. 2. [A.D. 1275.]

*A clerk convict of Felony, delivered to the Ordinary, shall not depart without Purgation.*

It is provided also, That when a Clerk is taken for guilty of Felony, and is demanded by the Ordinary, he shall be delivered to him according to the Privilege of Holy Church, on such Peril as belongeth to it, after the Custom aforesimes used. And the King admonisheth the Prelates, and enjoineth them upon the faith that they owe to him, and for the common Profit and Peace of the Realm, that they which be indicted of such Offences by solemn Inquest of lawful Men in the King's Court, in no manner shall be delivered without due Purgation, so that the King shall not need to provide any other Remedy therein.

## CAP. 39.\* [A.D. 1275.]

*Several Limitations of Prescription in several Writs.*

*And forasmuch as it is long Time passed since the Writs under-named were limited; it is provided, That in conveighing a Descent in a Writ of Right, none shall presume to declare of the Seisin of his Ancestor further, or beyond the time of King Richard, Uncle to King Henry, Father to the King that now is; and that a Writ of *Novel disseisin*, of Partition, which is called *Nuper obiit*, have their Limitation since the first Voyage of King Henry, Father to the King that now is, into *Gascoin*. And that Writs of *Mortdancestor*, of Cosinage, of *Aiel*, of Entry, and of *Nativis*, have their Limitation from the Coronation of the same King Henry, and not before. Nevertheless all Writs purchased now by themselves, or to be purchased between this and the Feast of St. John, for one Year compleat, shall be pleaded from as long Time, as heretofore they have been used to be pleaded.*

## 4 EDW. I. (DE BIG.). CAP. 6. [A.D. 1276.]

*By what Words in a Feoffment a Feoffor shall be bound to Warranty.*

In Deeds also where is contained *Dedi et concessi tale tenementum* without Homage, or without a Clause that containeth Warranty, and to be holden of the Givers, and their Heirs, by a certain Service; it is agreed that the Givers, and their Heirs, shall be bounden to Warranty. (2) And where is contained *Dedi et concessi, etc.* to be holden of the chief Lords of the Fee, or of other, and not of Feoffors, or of their Heirs, reserving no Service, without Homage or without the foresaid Clause, their Heirs shall not be bounden to Warranty, notwithstanding the Feoffor during his own Life, by Force of his own Gift, shall be bound to warrant.

## 6 EDW. I. (STAT. GLOUC.). CAP. 3. [A.D. 1278.]

*An Alienation of Land by the Tenant by the Curtesy with Warranty shall be void.*

It is established also, That if a Man aliene a Tenement, that he holdeth by the Law of *England*, his Son shall not be barred by the Deed of his father (from whom no Heritage to him descended) to

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\*For later Statutes of Limitation and Prescription, see 32 Hen. VIII. c. 2; 21 Jac. c. 16; 2 & 3 Wm. IV. c. 71; 3 & 4 Wm. IV. c. 27.

demand and recover by Writ of Mortdauncestor, of the Seisin of his Mother, although the Deed of his father doth mention, that he and his Heirs be bound to Warranty. (2) And if any Heritage descend to him of his father's Side, then he shall be barred for the Value of the Heritage that is to him descended. (3) And if in Time after any Heritage descend to him by the same father, then shall the Tenant recover against him of the Seisin of his Mother by a judicial Writ that shall issue out of the Rolls of the Justices, before whom the Plea was pleaded, to resummon his Warranty, as before hath been done in Cases where the Warrentor cometh into the Court, saying, That nothing descended from him by whose Deed he is vouched. (4) And in like Manner the Issue of the Son shall recover by Writ of *Cosinage, Aiel and Bisaiel*. (5) Likewise in like Manner the Heir of the Wife shall not be barred of his Action after the Death of his father and Mother, by the Deed of his father, if he demand by Action the Inheritance of his Mother by a Writ of Entry, which his father did aliene in the Time of his Mother, whereof no fine is levied in the King's Court.

## CAP. 5.

*Several Tenants against whom an Action of Waste is maintainable.*

It is provided also, That a Man from henceforth shall have a Writ of Waste in the Chancery against him that holdeth by Law of *England*, or otherwise for Term of Life, or for Term of Years, or a Woman in Dower. (2) And he which shall be attainted of Waste, shall lose the Thing that he hath wasted, and moreover shall recompense thrice so much as the Waste shall be taxed at. (3) And for Waste made in the Time of Wardship, it shall be done as is contained in the Great Charter. (4) And where it is contained in the Great Charter, that he which did waste during the Custody, shall leese the Wardship, (5) it is agreed that he shall recompense the Heir his Damages for the Waste, if so be that the Wardship lost do not amount to the Value of the Damages before the Age of the Heir of the same Wardship.

13 EDW. I. (WESTMINSTER II.). CAP. 1. [A.D. 1285.]

(De Donis). *In Gifts in tail the Donor's Will shall be observed. The Form of a Formedon.*

First, Concerning Lands that many Times are given upon Condition, that is to wit, Where any giveth his Land to any Man and his

Wife, and to the Heirs begotten of the Bodies of the same Man and his Wife, with such condition expressed, that if the same Man and his Wife die without Heirs of their Bodies between them begotten, the Land so given shall revert to the Giver or his Heir. (2) In case also where one giveth Lands in free Marriage, which Gift hath a Condition annexed, though it be not expressed in the deed of Gift, which is this, That if the Husband and Wife die without Heirs of their Bodies begotten, the Land so given shall revert to the Giver or his Heir. (3) In case also where one giveth Land to another, and the Heir of his Body issuing; it seemed very hard, and yet seemeth to the Givers and their Heirs, that their Will being expressed in the Gift, was not heretofore, nor yet is observed. (4) In all the Cases aforesaid, after Issue begotten and born between them (to whom the Lands were given under such Condition) heretofore such Feoffees had Power to aliene the Land so given, and to disherit their Issue of the Land, contrary to the Minds of the Givers, and contrary to the Form expressed in the Gift. (5) And further, When the Issue of such Feoffee is failing, the Land so given ought to return to the Giver or his Heir, by Form of the Gift expressed in the Deed, though the Issue (if any were) had died: (6) Yet by the Deed and Feoffment of them (to whom Land was so given upon Condition) the Donors have heretofore been barred of their Reversion, which was directly repugnant to the Form of the Gift.

II. Wherefore our Lord the King, perceiving how necessary and expedient it should be to provide Remedy in the aforesaid Cases, hath ordained, That the Will of the Giver, according to the Form in the Deed of Gift manifestly expressed, shall be from henceforth observed; so that they to whom the Land was given under such Condition, shall have no Power to aliene the Land so given, but that it shall remain unto the Issue of them to whom it was given after their Death, or shall revert unto the Giver, or his Heirs, if Issue fail (whereas there is no Issue at all) or if any Issue be, and fail by Death, or heir of the Body of such Issue failing. (2) Neither shall the second Husband of any such Woman from henceforth, have any Thing in the Land so given upon Condition, after the Death of his Wife, by the Law of *England*, nor the Issue of the second Husband and Wife shall succeed in the Inheritance, but immediately after the Death of the Husband and Wife (to whom the Land was so given) it shall come to their Issue, or return unto the Giver, or his Heir, as before is said.

III. And forasmuch as in a new Case new Remedy must be pro-

vided, this Manner of Writ shall be granted to the Party that will purchase it :

(2) *Praecipe A. quod juste etc. reddat B. manerium de F. cum suis pertinentiis, quod C. dedit tali viro et tali mulieri, et haeredibus de ipsis viro et muliere exeuntibus.* (3) Or thus : *Quod C. dedit tali viro in liberum maritagium cum tali muliere, et quod post mortem praedictorum viri et mulieris, praedicto B. filio eorundem viri et mulieris descendere debeat per formam donationis praedictae, ut dicit etc.* (4) Vel, *Quod C. dedit tali et haeredibus de corpore suo exeuntibus, et quod post mortem illius talis, praedicto B. filio praedicti talis descendere debeat per formam etc.*

IV. The Writ whereby the Giver shall recover (when Issue faileth) is common enough in the Chancery : (2) and it is to wit, that this Statute shall hold Place touching Alienation of Land contrary to the Form of the Gift hereafter to be made, and shall not extend to Gifts made before. (3) And if a Fine be levied hereafter upon such Lands, it shall be void in the Law ; (4) neither shall the Heirs, or such as the Reversion belongeth unto, though they be of full of Age, within *England*, and out of Prison, need to make their Claim.

#### CAP. 12.

*The Appellee being acquitted, the Appellor and Abettors shall be punished. There shall be no Essoin for the Appellor.*

Forasmuch as many, through Malice intending to grieve other, do procure false Appeals to be made of Homicides and other Felonies by Appellors, having nothing to satisfy the King for their false Appeal, nor to the Parties appealed for their Damages ; (2) it is ordained, That when any, being appealed of Felony surmised upon him, doth acquit himself in the King's Court in due Manner, either at the Suit of the Appellor, or of our Lord the King, the Justices, before whom the Appeal shall be heard and determined, shall punish the Appellor by a Year's Imprisonment, and the Appellors shall nevertheless restore to the Parties appealed their Damages, according to the Discretion of the Justices, having Respect to the Imprisonment or Arrestment, that the Party appealed hath sustained by reason of such Appeals and to the Infamy that they have incurred by the Imprisonment or otherwise, and shall nevertheless make a grievous Fine unto the King. (3) And if peradventure such Appellor be not able to

recompense the Damages, it shall be inquired by whose Abetment or Malice the Appeal was commenced if the Party appealed desire it ; (4) and if it be found by the same Inquest, that any Man is Abettor through Malice, at the Suit of the Party appealed he shall be distrained by a judicial Writ to come before the Justices ; (5) and if he be lawfully convict of such malicious Abetment, he shall be punished by Imprisonment and Restitution of Damages, as before is said of the Appellor. (6) And from henceforth in Appeal of the Death of a Man there shall no Essoin lie for the Appellor, in whatsoever Court the Appeal shall hap to be determined.

#### CAP. 18.

*He that recovereth Debt may sue Execution by Fieri facias or Elegit.*

When Debt is recovered or knowledged in the King's Court, or Damages awarded, it shall be from henceforth in the Election of him that sueth for such Debt or Damages, to have a Writ of *Fieri facias* unto the Sheriff for to levy the Debt of the Lands and Goods ; (2) or that the Sheriff shall deliver to him all the Chattels of the Debtor (saving only his Oxen and Beasts of his Plough) and the one half of his Land, until the Debt be levied upon a reasonable Price or Extent. (3) And if he be put out of that Tenement, he shall recover by a Writ of *Novel disseisin*, and after by a Writ of *Redisseisin*, if need be.

#### CAP. 19.

*The Ordinary chargeable to pay Debts as Executors.*

Whereas after the Death of a Person dying intestate, which is bounden to some other for Debt, the Goods come to the Ordinary to be disposed ; (2) the Ordinary from henceforth shall be bound to answer the Debts as far forth as the Goods of the Dead will extend, in such sort as the Executors of the same Party should have been bounden, if he had made a Testament.

#### CAP. 23.

*Executors may have a Writ of Accompt.*

Executors from henceforth shall have a Writ of Accompt, and the same Action and Process in the same Writ as the Testator might have had if he had lived.

## CAP. 24.

*In like Cases like Writs be grantable.*

II. (3) And whensoever from henceforth it shall fortune in the Chancery, that in one Case a Writ is found, and in like Case falling under like Law, and requiring like Remedy, is found none, the Clerks of the Chancery shall agree in making the Writ; (4) or the Plaintiffs may adjourn it until the next Parliament, and let the Cases be written in which they cannot agree, and let them refer themselves until the next Parliament, by Consent of Men learned in the Law, a Writ shall be made, lest it might happen after that the Court should long time fail to minister Justice unto Complainants.

18 EDW. I. (WESTMINSTER III.). CAP. 1. [A.D. 1290.]

(*Quia emptores terrarum.*)

*The Feoffee shall hold his Land of the chief Lord, and not of the Feoffor.*

Forasmuch as Purchasers of Lands and Tenements of the Fees of great Men and other Lords, have many Times heretofore entered into their Fees, to the Prejudice of the Lords, to whom the Freeholders of such great Men have sold their Lands and Tenements to be holden in Fee of their Feoffors, and not of the chief Lords of the Fees, whereby the same chief Lords have many Times lost their Escheats, Marriages, and Wardships of Lands and Tenements belonging to their Fees; which Thing seemed very hard and extream unto those Lords and other great Men, and moreover in this Case manifest Disheritance: (2) Our Lord the King, in his Parliament at Westminster, after Easter, the eighteenth Year of his Reign, that is to wit, in the Quinzime of Saint John Baptist, at the Instance of the great Men of the Realm, granted, provided, and ordained, That from henceforth it shall be lawful for every Freeman to sell at his own Pleasure his Lands and Tenements, or Part of them, so that the Feoffee shall hold the same Lands or Tenements of the chief Lord of the same Fee, by such Service and Customs as his Feoffor held before.

## CAP. 2.

*If Part of the Land be sold, the Services shall be apportioned.*

And if he sell any Part of such Lands or Tenements to any, the Feoffee shall immediately hold it of the chief Lord, and shall be forth-

with charged with the Services, for so much as pertaineth, or ought to pertain to the said chief Lord for the same Parcel, according to the Quantity of the Land or Tenement so sold. (2) And so in this Case the same Part of the Service shall remain to the Lord, to be taken by the Hands of the Feoffee, for the which he ought to be attendant and answerable to the same chief Lord, according to the Quantity of the Land or Tenement sold for the Parcel of the Service so due.

CAP. 3.

*No Feoffment shall be made to assure Land in Mortmain.*

And it is to be understood, that by the said Sales or Purchases of Lands or Tenements, or any Parcels of them, such Lands or Tenements shall in no wise come into Mortmain, either in Part or in Whole, neither by Policy ne Craft, contrary to the Form of the Statute made thereupon of late. (2) And it is to wit, that this Statute extendeth but only to Lands holden in Fee-simple; (3) and that it extendeth to the Time coming, and it shall begin to take Effect at the Feast of Saint Andrew the Apostle next coming.

18 EDW. I. (STAT. 4). Cl. 8 & 9.\* [A.D. 1290.]

*Fines, and who are bound by them.*

And the Cause wherefore such Solemnity ought to be done in a Fine, is, because a Fine is so high a Bar, of so great Force, and of so strong Nature in itself, that it concludeth not only such as be Parties and Privies thereto, and their Heirs but all other People of the World, being of full Age, out of Prison, of good Memory and within the Four Seas, the Day of the Fine levied, (9) if they make not their Claim of their Action within a Year and a Day by the Country.

4 EDW. III. CAP. 7. [A.D. 1330.]

*Executors shall have an Action of Trespass for a Wrong done to their Testator.*

Item, Whereas in Times past Executors have not had Actions for a Trespass done to their Testators, as of the Goods and Chattels of the same Testators carried away in their Life, and so such Tres-

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\* Other important acts concerning fines and recoveries are 34 Edw. III. c. 16; 4 Hen. VII. c. 24; 21 Hen. VIII. c. 15; 32 Hen. VIII. c. 36; 14 Eliz. c. 8; 31 Eliz. c. 2; 4 Anne, c. 16, §§ 15, 16; 14 Geo. II. c. 20; 3 & 4 Wm. IV. c. 74.

passes have hitherto remained unpunished; (2) it is enacted, That the Executors in such Cases shall have an Action against the Trespassers, and recover their Damages in like Manner, as they, whose Executors they be, should have had if they were in Life.

25 EDW. III. CAP. 5. [A.D. 1350.]

*Executors of executors shall have the benefit and charge of the first testator.*

Item, it is accorded and established, That executors of executors shall have actions of debts, accompts, and of goods carried away of the first testators, (2) and execution of statutes merchants and recognisances made in court of record to the first testator, in the same manner as the first testator should have had if he were in life, as well of actions of the time past, as of the time to come, in all cases where judgement is not yet given betwixt such executors; (3) but that the judgements given to the contrary to this article in times past shall stand in their force; (4) and that the same executors of executors shall answer to other of as much as they have recovered of the goods of the first testators, as the first executors should do if they were in full life.

31 EDW. III. CAP. 11. [A.D. 1357.]

*To whom the ordinary may commit the administration of the goods of him that dieth intestate. The benefit and charge of an administrator.*

Item, it is accorded and assented, That in case where a man dieth intestate, the ordinaries shall depute the next and most lawful friends of the dead person intestate to administer his goods; (2) which deputies shall have an action to demand and recover as executors the debts due to the said person intestate in the King's court, for to administer and dispend for the soul of the dead; (3) and shall answer also in the King's court to other to whom the said dead person was holden and bound, in the same manner as executors shall answer. (4) And they shall be accountable to the ordinaries, as executors be in the case of testament, as well of the time past as of the time to come.

## 5 RICII. II. CAP. 7.\* [A.D. 1381.]

*The penalty where any doth enter into lands where it is not lawful,  
or with force.*

And also the King defendeth, That none from henceforth make any entry into any lands and tenements, but in case where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner. (2) And if any man from henceforth do to the contrary, and thereof be duly convict, he shall be punished by imprisonment of his body, and thereof ransomed at the King's will.

## 4 HEN. VIII. CAP. 2. [A.D. 1512.]

*Punishment of Murders.*

Whereas robberies, murders and felonies daily encrease more and more, and been committed and done in more heinous, open, and detestable wise, than hath been oft seen in time past: and the persons so offending little regard the punishment thereof, by the course of the common law, ne by reason of any statute heretofore made, but bear them bold of their clergy, and imagining and pleading of feigned and untrue foreign pleas, triable in foreign counties, to the intent to be removed from place to place, by colourable and untrue suggestions, and for to be untruly acquit by favour, might, and corruption; so that they live in manner without fear or dread: (2) for reformation whereof, and for the common wealth of this realm, and for to put the said murderers, felons, and offenders in more fear and dread so to offend: Be it ordained, established and enacted by the King our sovereign lord, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That all person or persons, hereafter committing murder or felony, in any church, chapel, or hallowed place, or of and upon malice prepensed, rob or murder any person or persons in the King's high-way, or else rob or murder any person in his house, the owner or dweller of the house, his wife, child, or servant then being therein, and put in fear or dread by the same, That such person or persons so offending, be not from henceforth admitted to his or their clergy, (such as been within holy orders only except.)

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\* See 8 Hen. VI. c. 9; 31 Eliz. c. 11; 21 Jac. I. c. 15.

II. And over that, be it enacted by the said authority, That if any murderer or felon, upon his arraignment hereafter do allege, that he had taken any church or church-yard for murder felony or other place privileged for the same, in a foreign county, and against his will taken out thereof: that then the King's attorney, or any other person that will sue or allege for the King, that the said murderer or felon so arraigned, was taken at large in the same shire where he is so arraigned; that then the same allegiance and issue to be tried by the inquest that shall try the said murder or felony within the same shire, and before the same justice, where the said murderer or felon is arraigned, as though the said foreign plea had not been pleaded by the said felon: (2) and if it be found by the same inquest, that the said murderer or felon was taken within the same shire (as is aforesaid) that then he to have none advantage or benefit of the matter alledged by him for taking out of the church or church-yard, or other place privileged, in any such foreign shire: and this act to endure to the next parliament.

## 21 HENRY VIII. CAP. 4. [A.D. 1529.]

*The sale of land by part of the executors, lawful.*

Where divers sundry persons before this time, having other persons seized to their use of and in lands and other hereditaments to and for the declaration of their wills, have by their last wills and testaments willed and declared such their said lands, tenements, or other hereditaments to be sold by their executors, as well to and for the payments of their debts, performance of their legacies, necessary and convenient finding of their wives, virtuous bringing up and advancement of their children to marriage, as also for other charitable deeds to be done and executed by their executors for the health of their souls. (2) And notwithstanding such trust and confidence so by them put in their said executors, it hath oftentimes been seen, where such last wills and testaments of such lands, tenements, and other hereditaments have been declared, and in the same divers executors named and made, that after the decease of such testators some of the same executors, willing to accomplish the trust and confidence that they were put in by the said testator, have accepted and taken upon them the charge of the said testament, and have been ready to fulfil and perform all things contained in the same; and the residue of the same executors, uncharitably contrary to the trust that

they were put in, have refused to intermeddle in any wise with the execution of the said will and testament, or with the sale of such lands so willed to be sold by the testator. (3) And forasmuch as a bargain and sale of such lands, tenements, or other hereditaments so willed by any person to be sold by his executors after his decease, after the opinion of divers persons, can in no wise be good or effectual in the law, unless the same bargain and sale be made by the whole number of the executors named to and for the same; (4) by reason whereof, as well the debts of such testators have rested unpaid and unsatisfied, to the great danger and peril of the souls of such testators, and to the great hindrance, and many times to the utter undoing of their creditors: (5) as also the legacies and bequests made by the testator to his wife, children, and for other charitable deeds to be done for the wealth of the soul of the same testator that made the same testament, have been also unperformed, as well to the extreme misery of the wife and children of the said testator, as also to the let of performance of other charitable deeds for the wealth of the soul of the said testator, to the displeasure of Almighty God. (6) For remedy whereof, be it enacted, ordained, and established by the authority of this present parliament, That where part of the executors named in any such testament of any such person so making or declaring any such will of any lands, tenements, or other hereditaments to be sold by his executors, after the death of any such testator, do refuse to take upon him or them the administration and charge of the same testament and last will wherein they be so named to be executors, and the residue of the same executors do accept and take upon them the cure and charge of the same testament and last will; that then all bargains and sales of such lands, tenements, or other hereditaments, so willed to be sold by the executors of any such testator, as well heretofore made, as hereafter to be made by him or them only of the said executors that so doth accept, or that heretofore hath accepted and taken upon him or them any such cure or charge of administration of any such will or testament, shall be as good and as effectual in the law, as if all the residue of the same executors named in the said testament, so refusing the administration of the same testament, had joined with him or them in the making of the bargain and sale of such lands, tenements, or other hereditaments so willed to be sold by the executors of any such testator, which heretofore hath made or declared, or that hereafter shall make or declare any such will, of any such lands, tenements, or other hereditaments after his decease, to be sold by his executors.

II. Provided alway, That this act shall not extend to give power or authority to any executor or executors at any time hereafter to bargain or put to sale any lands, tenements, or hereditaments, by virtue and authority of any will or testament heretofore made, otherwise than they might do by the course of the common law afore the making this act.

## CAP. 5.

III. § 6. And in case any person die intestate, or that the executors named in any such testament refuse to prove the said testament, then the said ordinary, or other person or persons having authority to take probate of testaments, as is abovesaid, shall grant the administration of the goods of the testator, or person deceased, to the widow of the same person deceased, or to the next of his kin, or to both, as by the discretion of the same ordinary shall be thought good, taking surety of him or them, to whom shall be made such commission, for the true administration of the goods, chattels, and debts, which he or they shall be so authorised to minister; (7) and in case where divers persons claim the administration as next of kin, which be equal in degree of kindred to the testator or person deceased, and where any person only desireth the administration as next of kin, where indeed divers persons be in equality of kindred, as is aforesaid, that in every such case the ordinary to be at his election and liberty to accept any one or mo making request, where divers do require the administration.

IV. Or where but one or more of them, and not all being in equality of degree, do make request, then the ordinary to admit the widow, and him or them only making request, or any one of them at his pleasure, taking nothing for the same, unless the goods of the person so deceased amount above the value or sum of C. s. (2) and in case the goods of the person so deceased amount to above the value of C. s. and not above the value or sum of xl. li. then the said bishop, ordinary, or other person or persons so having authority to take probate of testaments, as is aforesaid, their ministers and officers shall take only ii. s. vi. d. sterling, and not above; (3) and that the executor and executors named by the testator, or person so deceased, or such other person or persons to whom such administration shall be committed where any person dieth intestate, or by way of intestate, calling or taking to him or them such person or persons, two at the least, to whom the said person so dying was indebted, or made any legacy, and upon their refusal or absence, two other honest persons, being next of

kin to the person so dying, and in their default and absence two other honest persons, and in their presence, and by their discretions, shall make, or cause to be made, a true and perfect inventory of all the goods, chattels, wares, merchandises, as well moveable as not moveable whatsoever, that were of the said person so deceased, (4) and the same shall cause to be indented, whereof the one part shall be by the said executor or executors, administrator or administrators, upon his or their oath or oaths, to be taken before the said bishops, or ordinaries, their officials, or commissaries, or other persons having power to take probate of testaments, upon the holy evangelists, to be good and true, and the same one part indented shall present and deliver into the keeping of the said bishop, ordinary, or ordinaries, or other person having power to take probate of testaments, and the other part thereof to remain with the said executor or executors, administrator or administrators; (5) and that no bishop, ordinary, or other whatsoever person, having authority to take probate of testament or testaments, as is above said, upon the pain in this estatute hereafter contained, refuse to take any such inventory or inventories to him or them presented or tendered to be delivered as is aforesaid.

V. § 1. Provided always, That if the person so deceased will by his testament, or last will, any lands, tenements, or hereditaments, to be sold, that the money thereof coming, nor the profits of the said lands, for any time to be taken, shall not be accounted as any of the goods or chattels, of the said person so deceased.

VIII. Provided alway, That this present act be not prejudicial to any ordinary, or any other person, which now have or hereafter shall have authority for probate of testaments, but that every of them shall and may convenant before them all and every person or persons made and named executor or executors of any testament, to the intent to prove or refuse the testament or testaments of their testator or testators, and to bring in inventories, and to do every other thing concerning the same, as they might do before the making of this act; (2) so that always any such ordinary, or other person or persons having such authority, by themselves, their commissaries, scribes, registers, or other ministers aforesaid, shall not in any wise take for the same above the fees limited by this act, ne in any wise attempt any thing contrary to any part of the same act.

## 27 HENRY VIII. CAP. 10. [A.D. 1535.]

*An act concerning uses and wills.*

Where by the common laws of this realm, lands tenements and hereditaments be not devisable by testament, (2) nor ought to be transferred from one to another, but by solemn livery and seisin, matter of record, writing sufficient made *bona fide*, without covin or fraud ; (3) yet nevertheless divers and sundry imaginations, subtle inventions and practices have been used, whereby the hereditaments of this realm have been conveyed from one to another by fraudulent feoffments, fines, recoveries and other assurances craftily made to secret uses, intents and trusts ; (4) and also by wills and testaments, sometime made by *nude parolx* and words, sometime by signs and tokens, and sometime by writing, and for the most part made by such persons as be visited with sickness, in their extreme agonies and pains, or at such time as they have scantily had any good memory or remembrance ; (5) at which times they being provoked by greedy and covetous persons lying in wait about them, do many times dispose indiscreetly and unadvisedly their lands and inheritances ; (6) by reason whereof, and by occasion of which fraudulent feoffments, fines, recoveries and other like assurances to uses, confidences and trusts, divers and many heirs have been unjustly at sundry times disherited, the lords have lost their wards, marriages, reliefs, harriots, escheats, aids *pur fair fits chivalier*, & *pur file marier*, (7) and scantily any person can be certainly assured of any lands by them purchased, nor know surely against whom they shall use their actions or executions for their rights, titles and duties ; (8) also men married have lost their tenancies by the courtesy, (9) women their dowers, (10) manifest perjuries by trial of such secret wills and uses have been committed ; (11) the King's highness hath lost the profits and advantages of the lands of persons attainted, (12) and of the lands craftily put in feoffments to the uses of aliens born, (13) and also the profits of waste for a year and a day of lands of felons attainted, (14) and the lords their escheats thereof ; (15) and many other inconveniences have happened, and daily do encrease among the King's subjects, to their great trouble and inquietness, and to the utter subversion of the ancient common laws of this realm ; (16) for the extirping and extinguishment of all such subtle practised feoffments, fines, recoveries, abuses and errors heretofore used and accustomed in this realm, to the subversion of the good and

ancient laws of the same, and to the intent that the King's highness, or any other his subjects of this realm, shall not in any wise hereafter by any means or inventions be deceived, damaged or hurt, by reason of such trusts, uses or confidences: (17) it may please the King's most royal majesty, That it may be enacted by his Highness, by the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, in manner and form following; that is to say, That where any person or persons stand or be seized, or at any time hereafter shall happen to be seized, of and in any honours, castles, manors, lands, tenements, rents, services, reversions, remainders or other hereditaments, to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will or otherwise, by any manner means whatsoever it be; that in every such case, all and every such person and persons, and bodies politic, that have or hereafter shall have any such use, confidence or trust, in fee-simple, fee-tail, for term of life or for years, or otherwise, or any use, confidence or trust, in remainder or reverter, shall from henceforth stand and be seized, deemed and adjudged in lawful seisin, estate and possession of and in the same honours, castles, manors, lands, tenements, rents, services, reversions, remainders and hereditaments, with their appurtenances, to all intents, constructions and purposes in the law, of and in such like estates as they had or shall have in use, trust or confidence of or in the same; (19) and that the estate, title, right and possession that was in such person or persons that were, or hereafter shall be seized of any lands, tenements or hereditaments, to the use, confidence or trust of any such person or persons, or of any body politic, be from henceforth clearly deemed and adjudged to be in him or them that have, or hereafter shall have, such use, confidence or trust, after such quality, manner, form and condition as they had before, in or to the use, confidence or trust that was in them.

II. And be it further enacted by the authority aforesaid, That where divers and many persons be, or hereafter shall happen to be, jointly seized of and in any lands, tenements, rents, reversions, remainders or other hereditaments, to the use, confidence or trust of any of them that be so jointly seized, that in every such case that those person or persons which have or hereafter shall have any such use, confidence or trust in any such lands, tenements, rents, reversions, remainders or hereditaments, shall from henceforth have,

and be deemed and adjudged to have only to him or them that have, or hereafter shall have any such use, confidence or trust, such estate, possession and seisin, of and in the same lands, tenements, rents, reversions, remainders and other hereditaments, in like nature, manner, form, condition and course, as he or they had before in the use, confidence or trust of the same lands, tenements or hereditaments; (2) saving and reserving to all and singular persons, and bodies politick, their heirs and successors, other than those person or persons which be seized, or hereafter shall be seized, of any lands, tenements or hereditaments, to any use, confidence or trust, all such right, title, entry, interest, possession, rents and action, as they or any of them had, or might have had before the making of this act.

III. And also saving to all and singular those persons, and to their heirs, which be, or hereafter shall be seized to any use, all such former right, title, entry, interest, possession, rents, customs, services and action, as they or any of them might have had to his or their own proper use, in or to any manors, lands, tenements, rents or hereditaments, whereof they be, or hereafter shall be seized to any other use, as if this present act had never been had nor made; any thing contained in this act to the contrary notwithstanding.

IV. And where also divers persons stand and be seized of and in any lands, tenements or hereditaments, in fee-simple or otherwise, to the use and intent that some other person or persons shall have and perceive yearly to them, and to his or their heirs, one annual rent of x. li. or more or less, out of the same lands and tenements, and some other person one other annual rent, to him and his assigns for term of life or years, or for some other special time, according to such intent and use as hath been heretofore declared, limited and made thereof:

V. Be it therefore enacted by the authority aforesaid, That in every such case the same persons, their heirs and assigns, that have such use and interest, to have and perceive any such annual rents out of any lands, tenements or hereditaments, that they and every of them, their heirs and assigns, be adjudged and deemed to be in possession and seisin of the same rent, of and in such like estate as they had in the title, interest or use of the said rent or profit, and as if a sufficient grant, or other lawful conveyance had been made and executed to them, by such as were or shall be seized to the use or intent of any such rent to be had, made or paid, according to the very trust and intent thereof, (2) and that all and every such person and per-

sons as have, or hereafter shall have, any title, use and interest in or to any such rent or profit, shall lawfully distrain for non-payment of the said rent, and in their own names make avowries, or by their bailiffs or servants make conisances and justifications, (3) and have all other suits, entries and remedies for such rents, as if the same rents had been actually and really granted to them, with sufficient clauses of distress, re-entry, or otherwise, according to such conditions, pains, or other things limited and appointed, upon the trust and intent for payment or surety of such rent.

XI. And forasmuch as great ambiguities and doubts may arise of the validity and invalidity of wills heretofore made of any lands, tenements and hereditaments, to the great trouble of the King's subjects; (2) the King's most royal majesty minding the tranquility and rest of his loving subjects, of his most excellent and accustomed goodness is pleased and contented that it be enacted by the authority of this present parliament, That all manner true and just wills and testaments heretofore made by any person or persons deceased, or that shall decease before the first day of *May*, that shall be in the year of our Lord God 1536, of any lands, tenements or other hereditaments, shall be taken and accepted good and effectual in the law, after such fashion, manner and form as they were commonly taken and used at any time within forty years next afore the making of this act; any thing contained in this act, or in the preamble thereof, or any opinion of the common law to the contrary thereof notwithstanding.

XII. Provided always, That the King's highness shall not have, demand or take any advantage or profit, for, or by occasion of the executing of any estate, only by authority of this act, to any person or persons, or bodies politick, which now have, or on this side the said first day of *May*, which shall be in the year of our Lord God 1536, shall have any use or uses, trusts or confidences in any manors, lands, tenements or hereditaments holden of the King's highness, by reason of primer seisin, livery, *ouster le main*, fine for alienation, relief or harriot; (2) but that fines for alienations, reliefs and harriots, shall be paid to the King's highness, and also liveries and *ouster les mains* shall be used for uses, trusts and confidences to be made and executed in possession by authority of this act, after and from the said first day of *May*, of lands and tenements, and other hereditaments holden of the King, in such like manner and form, to all intents, constructions and purposes, as hath heretofore been used or accustomed by the order of the laws of this realm.

XIII. Provided also, That no other person or persons, or bodies politick, of whom any lands, tenements or hereditaments be or hereafter shall be holden mediate or immediate, shall in any wise demand or take any fine, relief or harriot, for or by occasion of the executing of any estate by the authority of this act, to any person or persons, or bodies politick, before the said first day of *May*, which shall be in the year of our Lord God 1536.

XIV. And be it enacted by authority aforesaid, That all and singular person and persons, and bodies politick, which at any time on this side the said first day of *May*, which shall be in the year of our Lord God 1536, shall have any estate unto them executed of and in any lands, tenements or hereditaments, by the authority of this act, shall and may have and take the same or like advantage, benefit, voucher, aid prayer, remedy, commodity and profit by action, entry, condition or otherwise, to all intents, constructions and purposes, as the person or persons seised to their use of or in any such lands, tenements or hereditaments so executed, had, should, might or ought to have had at the time of the execution of the estate thereof, by the authority of this act, against any other person or persons, of or for any waste, disseisin, trespass, condition broken, or any other offence, cause or thing concerning or touching the said lands or tenements so executed by the authority of this act.\*

#### CAP. 16.

##### *For inrollment of bargains and sales.*

Be it enacted by the authority of this present parliament, That from the last day of *July*, which shall be in the year of our Lord God 1536, no manors, lands, tenements or other hereditaments, shall pass, alter or change from one to another, whereby any estate of inheritance or freehold shall be made or take effect in any person or persons, or any use thereof to be made, by reason only of any bargain and sale thereof, except the same bargain and sale be made by writing indented sealed, and inrolled in one of the King's courts of record at *Westminster*, (2) or else within the same county or counties where the same manors, lands or tenements, so bargained and sold, lie or be, before the *Custos Rotulorum* and two justices of the peace, and the clerk of the peace of the same county or counties, or two of them at the least,

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\* Earlier statutes concerning uses are 15 Rich. II. c. 5; 1 Rich. III. c. 1; 19 Hen. VII. c. 15; 23 Hen. VIII. c. 10.

whereof the clerk of the peace to be one; (3) and the same inrollment to be had and made within six months next after the date of the same writings indented; (4) the same *Custos Rotulorum*, or justices of the peace and clerk, taking for the inrollment of every such writing indented before them, where the land comprised in the same writing exceeds not the yearly value of forty shillings, ii. s. that is to say, xij. d. to the justices, and xij. d. to the clerk; (5) and for the inrollment of every such writing indented before them, wherein the land comprised exceeds the sum of xl. s. in the yearly value, v. s. that is to say, ii. s. vi. d. to the said justices, and ii. s. vi. d. to the said clerk for the inrolling of the same: (6) and that the clerk of the peace for the time being, within every such county, shall sufficiently inroll and ingross in parchment the same deeds or writings indented as is aforesaid; (7) and the rolls thereof at the end of every year shall deliver unto the said *Custos Rotulorum* of the same county for the time being, there to remain in the custody of the said *Custos Rotulorum* for the time being, amongst other records of every of the same counties where any such inrollment shall be so made, to the intent that every party that hath to do therewith, may resort and see the effect and tenor of every such writing so inrolled.

II. Provided always, That this act, nor any thing therein contained, extend to any manner lands, tenements, or hereditaments, lying or being within any city, borough or town corporate within this realm, wherein the mayors, recorders, chamberlains, bailiffs or other officer or officers have authority, or have lawfully used to inroll any evidences, deeds, or other writings within their precinct or limits; any thing in this act contained to the contrary notwithstanding.

31 HENRY VIII. CAP. 1. [A.D. 1539.]

*For joint tenants and tenants in common.*

Forasmuch as by the common laws of this realm divers of the King's subjects, being seised of manors, lands, tenements and hereditaments, as joint tenants, or as tenants in common with other, of any estate of inheritance, in their own right, or in the right of their wives, by purchase, descent or otherwise, and every of them so being joint tenants, or tenants in common, have like right, title, interest and possession in the same manors, lands, tenements and hereditaments, for their parts or portions jointly or in common undividedly together with other; (2) and none of them by the law doth or may know their

several parts or portions in the same, or that that is his or theirs, by itself undivided, and cannot by the laws of this realm otherwise occupy or take the profits of the same, or make any severance, division or partition thereof, without either of their mutual assents and consents ; (3) by reason whereof divers and many of them, being so jointly and undividedly seised of the said manors, lands, tenements and hereditaments, oftentimes of their perverse, covetous and malicious minds and wills, against all right, justice, equity and good conscience, by strength and power, not only cut and fallen down all the woods and trees growing upon the same, but also have extirped, subverted, pulled down and destroyed all the houses, edifices and buildings, meadows, pastures, commons, and the whole commodities of the same, and have taken and converted them to their own uses and behoofs, to the open wrong and disherison, and against the minds and wills of other holding the same manors, lands, tenements and hereditaments jointly or in common with them, and they have been always without assured remedy for the same :

II. Be it therefore enacted by the King our most dread sovereign lord, and by the assent of the lords spiritual and temporal, and by the commons, in this present parliament assembled, That all joint tenants and tenants in common, that now be, or hereafter shall be, of any estate or estates of inheritance in their own rights, or in the right of their wives, of any manors, lands, tenements or hereditaments within this realm of *England, Wales,* or the marches of the same, shall and may be coaxed and compelled, by virtue of this present act, to make partition between them of all such manors, lands, tenements and hereditaments, as they now hold, or hereafter shall hold as joint tenants or tenants in common, by writ *De participatione facienda*, in that case to be devised in the King our sovereign lord's court of chancery, in like manner and form as coparceners by the common laws of this realm have been and are compellable to do, and the same writ to be pursued at the common law.\*

32 HENRY VIII. CAP. 1. [A.D. 1540.]

*The act of wills, wards and primer seisins, whereby a man may devise two parts of his land.*

Where the King's most royal majesty in all the time of his most gracious and noble reign hath ever been a merciful, loving, benevo-

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\* [See 32 Henry VIII. c. 32.]

lent and most gracious sovereign lord, unto all and singular his loving and obedient subjects, and by many times past hath not only shewed and imparted to them generally by his many, often, and beneficial pardons heretofore by authority of his parliament granted, but also by divers other ways and means many great and ample grants and benignities, in such wise as all his said subjects been most bounden to the uttermost of all their powers and graces by them received of God, to render and give unto his Majesty their most humble reverence and obedient thanks and services, with their daily and continual prayer to Almighty God, for the continual preservation of his most royal estate in most kingly honour and prosperity ; (2) yet always his Majesty being replete and endowed by God with grace, goodness and liberality, most tenderly considering, that his said obedient and loving subjects cannot use or exercise themselves according to their estates, degrees, faculties and qualities, or to bear themselves in such wise, as that they may conveniently keep and maintain their hospitalities and families, nor the good education and bringing up of their lawful generations, which in this realm (laud be to God) is in all parts very great and abundant, but that in manner of necessity, as by daily experience is manifested and known, they shall not be able of their proper goods, chattels and other movable substance, to discharge their debts, and after their degrees set forth, to advance their children and posterities : (3) wherefore our said sovereign Lord, most virtuously considering the mortality that is to every person at God's will and pleasure most common and uncertain, of his most blessed disposition and liberality, being willing to relieve and help his said subjects in their said necessities and debility, is contented and pleased that it be ordained and enacted by authority of this present parliament, in manner and form as hereafter followeth ; that is to say, (4) That all and every person and persons, having, or which hereafter shall have, any manors, lands, tenements or hereditaments, holden in soccage, or of the nature of soccage tenure, and not having any manors, lands, tenements or hereditaments, holden of the King our sovereign lord by knights service, by soccage tenure in chief, or of the nature of soccage tenure in chief, nor of any other person or persons by knights service, from the twentieth day of *July* in the year of our Lord God M.D.XL. shall have full and free liberty, power and authority to give, dispose, will and devise, as well by his last will and testament in writing, or otherwise by any act or acts lawfully executed in his life, all his said manors, lands, tenements or hereditaments, or any of them, at his free will and pleasure ; any law, statute or

other thing heretofore had, made or used to the contrary notwithstanding.

II. And that all and every person and persons, having manors, lands, tenements or hereditaments, holden of the King our sovereign lord, his heirs or successors, in soccage, or of the nature of soccage tenure in chief, and having any manors, lands, tenements or hereditaments, holden of any other person or persons in soccage, or of the nature of soccage tenure, and not having any manors, lands, tenements or hereditaments, holden of the King our sovereign lord by knights service, nor of any other lord or person by like service, from the twentieth day of *July* in the said year of our Lord God M.D.XL. shall have full and free liberty, power and authority to give, will, dispose and devise, as well by his last will or testament in writing, or otherwise by any act or acts lawfully executed in his life, all his said manors, lands, tenements and hereditaments, or any of them, at his free will and pleasure; any law, statute, custom or other thing heretofore had, made or used to the contrary notwithstanding.

III. Saving alway and reserving to the King our sovereign lord, his heirs and successors, all his right, title and interest of *primer seisin* and reliefs, and also all other rights and duties for tenures in soccage, or of the nature of soccage tenure in chief, as heretofore hath been used and accustomed, (2) the same manors, lands, tenements or hereditaments to be taken, had and sued out of and from the hands of his Highness, his heirs and successors, by the person or persons to whom any such manors, lands, tenements or hereditaments shall be disposed, willed or devised, in such and like manner and form, as hath been used by any heir or heirs before the making of this statute; (3) and saving and reserving also fines for alienations of such manors, lands, tenements or hereditaments holden of the King our sovereign lord in soccage, or of the nature of soccage tenure in chief, whereof there shall be any alteration of freehold or inheritance, made by will or otherwise, as is aforesaid.

IV. And it is further enacted by the authority aforesaid, That all and singular person and persons having any manors, lands, tenements, or hereditaments of estate of inheritance holden of the King's highness in chief by knights service, or of the nature of knights service in chief, from the said twentieth day of *July* shall have full power and authority, by his last will, by writing, or otherwise by any act or acts lawfully executed in his life, to give, dispose, will or assign two parts of the same manors, lands, tenements, or hereditaments in three

parts to be divided, (2) or else as much of the said manors, lands, tenements, or hereditaments, as shall extend or amount to the yearly value of two parts of the same, in three parts to be divided, in certainty and by special divisions, as it may be known in severalty, (3) to and for the advancement of his wife, preferment of his children, and payment of his debts, or otherwise at his will and pleasure; any law, statute, custom, or other thing to the contrary thereof notwithstanding:

V. Saving and reserving to the King our sovereign lord, the custody, wardship and *primer seisin*, or any of them, as the case shall require, of as much of the same manors, lands, tenements or hereditaments, as shall amount and extend to the full and clear yearly value of the third part thereof, without any diminution, dower, fraud, covin, charge or abridgement of any of the same third part, or of the full profits thereof:

VI. Saving also and reserving to the King our said sovereign lord, all fines for alienations of all such manors, lands, tenements and hereditaments, holden of the King by knights service in chief, whereof there shall be any alteration of freehold or inheritance made by will or otherwise, as is abovesaid.

## CAP. 2.

### *The act of limitation with a proviso.*

Forasmuch as the time of limitation appointed for suing of writs of right, and other writs of possession and seisin of mens ancestors or predecessors, or of their own possession or seisin, by the laws and statutes of this realm heretofore made, limited and appointed, extend, and be of so far and long time past, that it is above the remembrance of any living man, truly to try and know the perfect certainty of such things, as hath or shall come in trial, or do extend unto the time and times limited by the said laws and statutes, to the great danger of mens consciences that have or shall be impanelled in any jury for the trial of the same; (2) and it is also a great occasion of much trouble, vexation and suits to the King's loving subjects at the common laws of this realm; so that no man, although he and his ancestors, and those whose estate he or they have, have been in peaceable possession of a long season, of and in lands, tenements and other hereditaments, is or can be in any surety, quietness or rest, of and in the same, without a good remedy and reformation be had, made and provided

for the same: (3) be it therefore enacted by the King our sovereign lord, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That no manner of person or persons shall from henceforth sue, have or maintain any writ of right, (4) or make any prescription, title or claim of, to or for any manors, lands, tenements, rents, annuities, commons, pensions, portions, corrodies or other hereditaments, (5) of the possession of his or their ancestor or predecessor, and declare and alledge any further seisin or possession of his or their ancestor or predecessor, but only of the seisin or possession of his ancestor or predecessor, which hath been, or now is, or shall be seized of the said manors, lands, tenements, rents, annuities, commons, pensions, portions, corrodies or other hereditaments, within threescore years next before the *teste* of the same writ, or next before the said prescription, title or claim so hereafter to be sued, commenced, brought, made or had.

II. And be it further enacted by the authority aforesaid, That no manner of person nor persons shall hereafter sue, have or maintain any assise of mort-ancestor, cosinage, ayel, writ of entry upon disseisin done to any of his ancestors or predecessors, or any other action possessory, upon the possession of any of his ancestors or predecessors, for any manors, lands, tenements or other hereditaments, of any further seisin or possession of his or their ancestor or predecessor, but only of the seisin or possession of his or their ancestor or predecessor, which was, or hereafter shall be seized of the same manors, lands, tenements or other hereditaments, within fifty years next before the *teste* of the original of the same writ hereafter to be brought.

III. And be it further enacted by the authority aforesaid, That no person nor persons shall hereafter sue, have or maintain any action for any manors, lands, tenements or other hereditaments of or upon his or their own seisin or possession therein, above thirty years next before the *teste* of the original of the same writ hereafter to be brought.

IV. And be it also enacted by the authority aforesaid, That no person nor persons shall hereafter make any avowry or cognizance for any rent, suit or service, and alledge any seisin of any rent, suit or service in the same avowry or cognizance, in the possession of his or their ancestors or predecessor or predecessors, or in his own possession, or in the possession of any other, whose estate he shall pretend or claim to have above fifty years next before the making of the said avowry or cognizance.

V. And over that be it enacted by the authority aforesaid, That all formedons in reverter, formedons in remainder, and *scire facias* upon fines, of any manors, lands, tenements, or other hereditaments, at any time hereafter to be sued, shall be sued, used and taken within fifty years next after that the title and cause of action fallen, and at no time after the said fifty years passed.

VI. And be it also enacted by the authority aforesaid, That if any person or persons at any time hereafter do sue any of the said actions or writs, for any manors, lands, tenements or other hereditaments, (2) or make any avowry, cognizance, prescription, title or claim of or for any rent, suit, service or other hereditaments, (3) and cannot prove that he or they, or his or their ancestors or predecessors, were in actual possession or seisin of and in the same manors, lands, tenements, rents, suits, services, annuities, commons, pensions, portions, corrodies or other hereditaments, at any time or times within the years before limited and appointed in this present act, and in manner and form as is aforesaid, (4) if the same be traversed or denied by the party plaintiff, defendant, or avowant, or by the party tenant or defendant, that then and after such trial therein had, all and every such person and persons and their heirs, shall from henceforth be utterly barred for ever, of all and every the said writs, actions, avowries, cognizance, prescription, title, or claim hereafter to be sued, had or made, of and for the same manors, lands, tenements, hereditaments or other the premises, or any part of the same, for the which the same action, writ, avowry, cognizance, prescription, title or claim hereafter shall be at any time had, sued or made.

VII. Provided alway, and be it enacted by the authority aforesaid, That all and every person and persons which now have any of the said actions, writs, avowries, *Scire facias*, cognizance, prescription, title or claim depending, or that hereafter shall sue, commence, make or bring any of the said writs or actions, or make any of the said avowries, cognizances, prescription, titles or claim, at any time before the feast of the Ascension of our Lord God, which shall be in the year of our Lord God a thousand five hundred forty and six, shall alledge the seisin of his or their ancestors or predecessors, or his own possession and seisin, and also have all other like advantages to all intents and purposes in the same writs, actions, avowries, cognizances, prescriptions, titles and claims, as he or they might have had at any time before the making of this estatute ; this act or anything therein contained to the contrary notwithstanding.

VIII. Provided also, and be it further enacted by the authority aforesaid, That if any person or persons now being within the age of twenty-one years, or covert baron, or in prison, or out of this realm of *England*, now having cause to have, sue, commence, make or bring any of the said writs or actions, or to make any avowries, cognizances, prescriptions, titles or claims, that it shall be lawful to such person or persons being within age, covert baron, in prison, or out of this realm, to sue, commence, or bring any of the said writs or actions, or make any of the said avowries, cognizances, prescriptions, titles or claims, at any time within six years next after such person or persons, now being within age, shall accomplish the age of one and twenty years, or within six years next after such person or persons, now being covert baron, shall be sole, or within six years next after such person or persons, now being in prison, shall be set at his liberty, or within six years next after such person or persons, now being out of this realm, shall come and be within this realm : (2) And that every such person and persons in their said actions, writs, avowries, cognizances, prescriptions, titles or claims to be made, sued or commenced within the said six years, shall alledge within the six years the seisin of his or their ancestors or predecessors, or of his own possession, or of the possession of those whose estate he shall then claim ; (3) and also within the same six years shall have all and every like advantages to all intents and purposes in the same, as he or they might have had before the making of this act, and as though this act had never been had ne made ; this act nor any thing therein contained to the contrary notwithstanding.

IX. Provided also, That if it happen the said person or persons, now being within age, or covert baron, in prison, or out of this realm, having cause to sue, commence, make or bring any the said writs, actions, avowries, cognizance, prescription, title or claim, to decease within age, or being covert, as is aforesaid, or during the time he or they shall be in prison or out of this realm, or to decease within six years next after such person or persons shall accomplish his or their full ages, or shall be at large within this realm, or shall become sole, and no determination or judgment had of such titles, actions or rights, so to them accrued ; that then the next heir or heirs of such person or persons being in prison, or out of this realm, or within age, or being covert baron, so dying, shall have and enjoy all and every such liberty and advantage to sue, demand, advow, declare or make their said titles, claims or prescriptions within six years next after the death of

such person or persons now imprisoned or being out of this realm, or within age, or covert de baron, in such or like manner and form to all intents and purposes, as the same infant after his full age, or the said woman covert after the death of her husband, or the same person being out of this realm after his repair or coming into the same, or the said person imprisoned after his enlargement and coming out of prison, should or might have had within six years then next ensuing, by force and virtue of the provision last before rehearsed ; any thing in this act contained to the contrary thereof in any wise notwithstanding.

X. Provided also, That if any person or persons before the said feast of the Ascension of our Lord God, which shall be in the said year of our Lord God one thousand five hundred and forty six, commence and sue any of the said actions or writs, or make any avowry, prescription, title or claim, and the same action, writ, avowry, cognizance, prescription, title or claim happen, by the death of any of the parties to the same, to be abated before judgment or determination thereof had ; that then the said person or persons, being demandants or avowants, or making any such cognizance, prescription, title or claim, being then alive, and if not, then the next heir or heirs of such person or persons so deceased, may commence and pursue his or their action and suit, and make his or their avowry, cognizance, prescription, title or claim, for or upon the same matter, within one year next after such action or suit abated, and shall have and enjoy all and every such liberty and advantage to sue, demand, avow, declare or make their said titles, claims or prescriptions, within the said one year, as the demandant or demandants in such writ or suit abated, or as such as did avow or make cognizance, title or claim, or prescription, should or might have done, had, used, made or enjoyed in the said former action or suit ; any thing in this act to the contrary notwithstanding.

XI. Provided furthermore, That if any false verdict happen hereafter to be given or made in any of the said actions, suits, avowries, prescriptions, titles or claims, that then the party grieved by reason of the same shall and may have his attaint upon every such verdict so given or made, and the plaintiff in the same attaint, upon judgment for him given, shall have his recovery, execution and other advantage, in like manner and form as heretofore hath been used and accustomed ; any thing before in this act contained to the contrary thereof notwithstanding.

## CAP. 9.

*The bill of bracery and buying of titles.*

The King our sovereign lord, calling to his most blessed remembrance, that there is nothing within this realm that conserveth his loving subjects in more quietness, rest, peace and good concord, than the due and just ministration of his laws, and the true and indifferent trials of such titles and issues, as been to be tried according to the laws of this realm, (2) which his most royal Majesty perceiveth to be greatly hindred and letted by maintenance, embracery, champerty, subornation of witnesses, sinister labour, buying of titles and pretended rights of persons not being in possession, (3) whereupon great perjury hath ensued, and much quietness, oppression, vexation, troubles, wrongs and disinheritance hath followed among his most loving subjects, to the great displeasure of Almighty God, the discontentation of his Majesty, and to the great hindrance and let of justice within this his realm: (4) for the avoiding of all which misdemeanors, and buying of titles and pretended rights, and to the intent that justice may be more fully and indifferently ministred, and the truth in causes of contention plainly tried between his subjects of this realm: (5) be it enacted by our said sovereign lord, with the assent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That from henceforth all statutes heretofore made concerning maintenance, champerty and embracery, or any of them, now standing and being in their full strength and force, shall be put in due execution, according to the tenures and effects of the same statutes.

II. And over that, be it further enacted by the authority aforesaid, That no person nor persons, of what estate, degree or condition soever he or they be, shall from henceforth bargain, buy, or sell, or by any ways or means obtain, get or have any pretended rights or titles, or take promise, grant or covenant to have any right or title of any person or persons, in or to any manors, lands, tenements or hereditaments; (except such person or persons, which shall so bargain, sell, give, grant, covenant or promise the same, their antecessors, or they by whom he or they claim the same, have been in possession of the same, or of the reversion or remainder thereof, or taken the rents or profits thereof, by the space of one whole year next before the said bargain, covenant, grant or promise made) (2) upon pain that he that shall make any such bargain, sale, promise, covenant or grant, to forfeit the

whole value of the lands, tenements or hereditaments, so bargained, sold, promised, covenanted or granted, contrary to the form of this act; (3) and the buyer and taker thereof, knowing the same, to forfeit also the value of the said lands, tenements or hereditaments so by him bought or taken as is abovesaid; (4) the one half of the said forfeitures to be to the King our sovereign lord, and the other half to the party that will sue for the same in any of the King's courts of record, by action of debt, bill, plaint or information; in which action, bill, plaint or information, no essoin, protection, wager of law, nor injunction shall be allowed.

IV. Provided alway, and be it enacted by the authority aforesaid, That it shall be lawful to any person or persons being in lawful possession by taking of the yearly farm, rents or profits, of or for any manors, lands, tenements or hereditaments, to buy, obtain, get or have, by any reasonable ways or means, the pretended right or title of any other person or persons, hereafter to be made to, of, or in such manors, lands, tenements or hereditaments, whereof he or they shall so be in lawful possession; any thing in this act contained to the contrary notwithstanding.

CAP. 28.

*Lessees to enjoy the farm against the tenants in tail.*

Where great number of the King's subjects have heretofore taken leases of lands, tenements and other hereditaments, for term of years, and divers of them for term of lives, and have given and paid great fines and great sums for the same, and also have been at great costs and charges, as well in and about great reparations and buildings upon their said fermes, as otherwise concerning their said fermes; (2) yet notwithstanding the said fermors, after the deaths or resignations of their lessors, have been and be daily with great cruelty expulsed and put out of their said fermes and takings, by the heirs or successors of their said lessors, or by such persons as have interest therein after the deaths or resignations of their said lessors, by reason of privy gifts of intail, or for that the lessors had nothing in the lands, tenements or other hereditaments so letten, at the time of the leases thereof made, but only in the right of their wives, or such other like cause, to the great impoverishment, and in manner utter undoing of the said fermors: (3) For reformation whereof, be it ordained, established and enacted by the King our sovereign lord, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority

of the same, That all leases hereafter to be made of any manors, lands, tenements or other hereditaments by writing indented under seal for term of years, or for term of life, by any person or persons being of full age of twenty-one years, having any estate of inheritance either in fee-simple or in fee-tail, in their own right, or in the right of their churches or wives, or jointly with their wives, of any estate of inheritance made before the coverture or after, shall be good and effectual in the law against the lessors, their wives, heirs and successors, and every of them, according to such estate as is comprised and specified in every such indenture of lease, in like manner and form as the same should have been, if the lessors thereof, and every of them, at the time of the making of such leases, had been lawfully seised of the same lands, tenements and hereditaments comprised in such indenture, of a good, perfect and pure estate of fee-simple thereof to their own only uses.

II. Provided always, That this act, or any thing contained, shall not extend to any leases to be made of any manors, lands, tenements or hereditaments, being in the hands of any fermor or fermors by virtue of any old lease, unless the same old lease be expired, surrendred or ended within one year next after the making of the said new lease; (2) nor shall extend to any grant to be made of any reversion of any manors, lands, tenements or hereditaments, (3) nor to any lease of any manors, lands, tenements or hereditaments which have not most commonly been letten to ferm, or occupied by the fermors thereof, by the space of twenty years next before such lease thereof made; (4) nor to any lease to be made without impeachment of waste, (5) nor to any lease to be made above the number of twenty-one years, or three lives, at the most from the day of making thereof; (6) and that upon every such lease, there be reserved yearly during the same lease, due and payable to the lessors, their heirs and successors, to whom the same lands should have come after the deaths of the lessors, if no such lease had been thereof made, and to whom the reversion thereof shall appertain, according to their estates and interests, so much yearly ferm or rent, or more, as hath been most accustomably yielden or paid for the manors, lands, tenements and hereditaments so to be letten within twenty years next before such lease thereof made; (7) and that every such person and persons, to whom the reversion of such manors, lands, tenements or hereditaments so to be letten shall appertain, as is aforesaid, after the deaths of such lessors or their heirs, shall and may have such like remedy and advantage, to all intents and purposes,

against the lessees thereof, their executors and assigns, as the same lessor should or might have had against the same lessees. (8) So that if the lessor were seised of any special estate-tail of the same hereditaments at the time of such lease, that the issue or heir of that special estate shall have the reversion rents and services reserved upon such lease after the death of the said lessor, as the lessor himself might or ought to have had if he had lived.

III. Provided alway, That the wife be made party to every such lease which hereafter shall be made by her husband of any manors, lands, tenements or hereditaments, being the inheritance of the wife; (2) and that every such lease be made by indenture in the name of the husband and his wife, and she to seal to the same; (3) and that the ferm and rent be reserved to the husband and to the wife, and to the heirs of the wife, according to her estate of inheritance in the same; (4) and that the husband shall not in any wise alien, discharge, grant or give away the same rent reserved, nor any part thereof, longer than during the coverture, without it be by fine levied by the said husband and wife; (5) but that the same rent shall remain, descend, revert or come after the death of such husband, unto such person or persons and their heirs, in such manner and sort as the lands so leased should have done, if no such lease had been thereof made.

VI. And moreover for certain consideration be it enacted by authority aforesaid, That no fine, feoffment or other act or acts hereafter to be made, suffered or done by the husband only, of any manors, lands, tenements or hereditaments, being the inheritance or freehold of his wife, during the coverture between them, shall in any wise be or make any discontinuance thereof or be prejudicial or hurtful to the said wife or to her heirs, or to such as shall have right, title or interest to the same by the death of such wife or wives; (2) but that the same wife and her heirs, and such other to whom such right shall appertain after her decease, shall and may then lawfully enter into all such manors, lands, tenements and hereditaments according to their rights and titles therein; any such fine, feoffment or other act to the contrary notwithstanding; fines levied by the husband and wife (whereunto the said wife is party and privy) only except.

VII. Provided furthermore, That this clause or act extend not to give any liberty to any such wife, or to her heirs, for to avoid any lease hereafter to be made of any the inheritance of the wife by her husband and her for term of one and twenty years, or under, or any her inheri-

tance for term of three lives at the uttermost, whereupon as much yearly rent or more is or shall be reserved, and yearly payable during the same lease, as was at any time therefore yielden or paid within twenty years next before the making of any such lease, according to the tenor of this present act; any thing therein contained to the contrary notwithstanding.

## CAP. 33.

*An act that wrongful disseisin is no descent in law.*

Where divers persons of their insatiable minds have heretofore by strength, and without title, entered into manors, lands, tenements and other hereditaments, and wrongfully disseised the rightful owners and possessors thereof, and so being seised by disseisin, have thereof died seised, by reason of which dying seised, the disseisee, or such other persons as before such descent might have lawfully entered into the said manors, lands and tenements, were and be thereby clearly excluded of their entry into the said manors, lands and tenements, and put to their action for their remedy and recovery therein, to their great costs and charges; (2) for reformation whereof, be it enacted by the authority of this present parliament, That the dying seised hereafter of any such disseisor, of or in any manors, lands, tenements, or other hereditaments, having no right or title therein, shall not be taken or deemed from henceforth any such descent in the law, for to toll or take away the entry of any such person or persons, or their heirs, which at the time of the same descent had good and lawful title of entry into the said manors, lands, tenements or hereditaments, except that such disseisor hath had the peaceable possession of such manors, lands, tenements or hereditaments whereof he shall so die seised, by the space of five years next after the disseisin therein by him committed, without entry or continual claim by or of such person or persons as have lawful title thereunto.

## CAP. 34.

*Concerning grantees of reversions to take advantage of the conditions to be performed by the lessees.*

Where before this time divers, as well temporal as ecclesiastical and religious persons, have made sundry leases, demises and grants to divers other persons, of sundry manors, lordships, fermes, meases, lands, tenements, meadows, pastures, or other hereditaments, for term

of life or lives, or for term of years, by writing under their seal or seals, containing certain conditions, covenants and agreements to be performed, as well on the part and behalf of the said lessees and grantees, their executors and assigns, as on the behalf of the said lessors and grantors, their heirs and successors; (2) and forasmuch as by the common law of this realm, no stranger to any covenant, action or condition, shall take any advantage or benefit of the same, by any means or ways in the law, but only such as be parties or privies thereunto, by the reason whereof, as well all grantees of reversions, as also all grantees and patentees of the King our sovereign lord, of sundry manors, lordships, granges, fermes, meases, lands, tenements, meadows, pastures, or other hereditaments late belonging to monasteries, and other religious and ecclesiastical houses dissolved, suppressed, renounced, relinquished, forfeited, given up, or by other means come to the hands and possession of the King's majesty since the fourth day of *February* the seven and twentieth year of his most noble reign, be excluded to have any entry or action against the said lessees and grantees, their executors or assigns, which the lessors before that time might by the law have had against the same lessees for the breach of any condition, covenant or agreement comprised in the indentures of their said leases, demises and grants: (3) be it therefore enacted by the King our sovereign lord, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, That as well all and every person and persons, and bodies politick, their heirs, successors and assigns, which have or shall have any gift or grant of our said sovereign lord by his letters patents of any lordships, manors, lands, tenements, rents, parsonages, tithes, portions, or any other hereditaments, or of any reversion or reversions of the same, which did belong or appertain to any of the said monasteries, and other religious and ecclesiastical houses, dissolved, suppressed, relinquished, forfeited, or by any other means come to the King's hands since the said fourth day of *February* the seven and twentieth year of his most noble reign, or which at any time heretofore did belong or appertain to any other person or persons, and after came to the hands of our said sovereign lord, (4) as also all other persons being grantees or assignees to or by our said sovereign lord the King, or to or by any other person or persons than the King's highness, and the heirs, executors, successors and assigns of every of them, (5) shall and may have and enjoy like advantages against the lessees, their executors, administrators and assigns, by

entry for non-payment of the rent, or for doing of waste or other forfeiture ; (6) and also shall and may have and enjoy all and every such like, and the same advantage, benefit and remedies by action only, for not performing of other conditions, covenants or agreements contained and expressed in the indentures of their said leases, demises or grants, against all and every the said lessees and farmers and grantees, their executors, administrators and assigns, as the said lessors or grantors themselves, or their heirs or successors, ought, should, or might have had and enjoyed at any time or times, (7) in like manner and form as if the reversion of such lands, tenements or hereditaments had not come to the hands of our said sovereign lord, or as our said sovereign lord, his heirs and successors, should or might have had and enjoyed in certain cases, by virtue of the act made at the first session of this present parliament, if no such grant by letters patents had been made by his Highness.

II. Moreover be it enacted by authority aforesaid, That all farmers, lessees and grantees of lordships, manors, lands, tenements, rents, parsonages, tithes, portions, or any other hereditaments for term of years, life or lives, their executors, administrators and assigns, shall and may have like action, advantage and remedy against all and every person and persons and bodies politick, their heirs, successors and assigns, which have or shall have any gift or grant of the King our sovereign lord, or of any other person or persons, of the reversion of the same manors, lands, tenements, and other hereditaments so letten, or any parcel thereof, for any condition, covenant or agreement contained or expressed in the indentures of their lease and leases, as the same lessees, or any of them might and should have had against the said lessors and grantors, their heirs and successors ; (2) all benefits and advantages of recoveries in value by reason of any warranty in deed or in law by voucher or otherwise only accepted.

## CAP. 37.

*For recovery of arrearages of rents by executors of tenant in fee-simple.*

Forasmuch as by the order of the common law, the executors or administrators of tenants in fee-simple, tenants in fee-tail, and tenants for term of lives, of rents services, rent charges, rents secks, and fee-farms, have no remedy to recover such arrearages of the said rents or fee-farms as were due unto their testators in their lives, (2) nor yet the heirs of such testator, nor any person having the reversion of his

estate after his decease, may distrain, or have any lawful action to levy any such arrearages of rents or fee-farms, due unto him in his life as is aforesaid ; (3) by reason whereof, the tenants of the demeans of such lands, tenements or hereditaments, out of the which such rents were due and payable, who of right ought to pay their rents and farms at such days and terms as they were due, do many times keep, hold and retain such arrearages in their own hands, so that the executors and administrators of the persons to whom such rents or fee-farms were due, cannot have or come by the said arrearages of the same, towards the payment of the debts and performance of the will of the said testators : (4) For remedy whereof, be it enacted by the authority of this present parliament, That the executors and administrators of every such person or persons, unto whom any such rent or fee-farm is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages, against the tenant or tenants that ought to have paid the said rent or fee-farms so being behind in the life of their testator, or against the executors and administrators of the said tenants ; (5) and also furthermore, it shall be lawful to every such executor and administrator of any such person or persons unto whom such rent or fee-farm is or shall be due, and not paid at the time of his death as is aforesaid, to distrain for the arrearages of all such rents and fee-farms, upon the lands, tenements and other hereditaments, which were charged with the payment of such rents or fee-farms, and chargeable to the distress of the said testator, (6) so long as the said lands, tenements or hereditaments continue, remain and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent or fee-farm so being behind, to the said testator in his life, (7) or in the seisin or possession of any other person or persons claiming the said lands, tenements and hereditaments, only by and from the same tenant by purchase, gift or descent, (8) in like manner and form as their said testator might or ought to have done in his life-time, and the said executors and administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid.

III. And further be it enacted by the authority aforesaid, That if any man which now hath, or hereafter shall have in the right of his wife, any estate in fee-simple, fee-tail, or for term of life, of or in any rents or fee-farms, and the same rents or fee-farms now be, or hereafter shall be due, behind and unpaid in the said wife's life ; then the said husband, after the death of his said wife, his executors and ad-

ministrators, shall have an action of debt for the said arrearages against the tenant of the demesn that ought to have paid the same, his executors or administrators ; (2) and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form, as he might have done if his said wife had been then living, and make avowry upon his matter as is aforesaid.

IV. And likewise it is further enacted by the authority aforesaid, That if any person or persons which now have, or hereafter shall have, any rents or fee-farms for term of life or lives, of any other person or persons, and the said rent or fee-farm now be, or hereafter shall be due, behind and unpaid in the life of such person or persons for whose life or lives the estate of the said rent or fee-farm did depend or continue, and after the said person or persons do die, then he unto whom the said rent or fee-farm was due in form aforesaid, his executors or administrators shall and may have an action of debt against the tenant in demesn, that ought to have paid the same when it was first due, his executors and administrators, (2) and also distrain for the same arrearages upon such lands and tenements out of the which the said rents or fee-farms were issuing and payable, (3) in such like manner and form as he ought or might have done, if such person or persons by whose death the aforesaid estate in the said rents and fee-farms was determined and expired, had been in full life and not dead ; and the avowry for the taking of the same distress to be made in manner and form aforesaid.

34 & 35 HEN. VIII. CAP. 5. [A.D. 1542-1543.]

*The bill concerning the explanation of wills.*

I. Where in the last parliament begun and holden at *Westminster* the thirty-eighth day of *April* in the thirty-first year of the King's most gracious reign, and thereby divers prorogations holden and continued unto the twenty-fourth day of *July* in the thirty-second year of his said reign, it was by the King's most gracious and liberal disposition shewed toward his most humble and obedient subjects, ordained and enacted how and in what manner lands, tenements, and other hereditaments might be by will or testament in writing, or otherwise by any act or acts lawfully executed in the life of every person, given, disposed, willed or devised, for the advancement of the wife, preferment of the children, payment of debts of every such person, or otherwise at his will and pleasure, as in the same act more plainly is

declared: (2) sithen the making of which estatute, divers doubts, questions and ambiguities have risen, been moved, and grown, by diversity of opinions, taken in and upon the exposition of the letter of the same estatute.

II. For a plain declaration and explanation whereof, and to the intent and purpose that the King's obedient and loving subjects shall and may take the commodity and advantage of the King's said gracious and liberal disposition, the lords spiritual and temporal, and the commons, in this present parliament assembled, most humbly beseechen the King's majesty, that the meaning of the letter of the same estatute, concerning such matters hereafter rehearsed, may be by the authority of this present parliament enacted, taken, expounded, judged, declared and explained in manner and form following:

III. First, Where it is contained in the same former statute, within divers articles and branches of the same, that all and singular person and persons having any manors, lands, tenements or hereditaments of the estate of inheritance, should have full and free liberty, power and authority to give, will, dispose or assign, as well by his last will and testament in writing, or otherwise by any act or acts lawfully executed in his life, his manors, lands, tenements or hereditaments, or any of them, in such manner and form as in the same former act more at large it doth appear. Which words of *estate of inheritance*, by the authority of this present parliament, is and shall be declared, expounded, taken and judged of estates in fee-simple only.

IV. And also that all and singular person and persons having a sole estate or interest in fee-simple, or seised in fee-simple in coparcenary, or in common in fee-simple, of and in any manors, lands, tenements, rents or other hereditaments, in possession, reversion, remainder, or of rents or services incident to any reversion or remainder, and having no manors, lands, tenements or hereditaments holden of the King, his heirs or successors, or of any other person or persons by knights-service, shall have full and free liberty, power and authority to give, dispose, will or devise to any person or persons (except bodies politick and corporate) by his last will and testament in writing, or otherwise by any act or acts lawfully executed in his life, by himself solely, or by himself and other jointly, severally or particularly, or by all those ways, or any of them, as much as in him of right is or shall be, all his said manors, lands, tenements, rents and hereditaments, or any of them, or any rents, commons or other profits or commodities out of or to be perceived of the same, or out of any parcel thereof, at

his own free will and pleasure; any clause in the said former act notwithstanding.

XIV. And it is further declared and enacted by the authority aforesaid, That wills or testaments made of any manors, lands, tenements, or other hereditaments, by any woman covert, or person within the age of twenty-one years, idiot, or by any person *de non sane* memory, shall not be taken to be good or effectual in the law.

13 ELIZ. CAP. 5. [A.D. 1570.]

*An act against fraudulent deeds, alienations, &c.*

For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, more commonly used and practised in these days than hath been seen or heard of heretofore: (2) which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, have been and are devised and contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent, to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, not only to the let or hinderance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and chevisance between man and man, without the which no commonwealth or civil society can be maintained or continued:

II. Be it therefore declared, ordained and enacted by the authority of this present parliament, That all and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, (2) and all and every bond, suit, judgment and execution, at any time had or made sithence the beginning of the Queen's majesty's reign that now is, or at any time hereafter to be had or made, (3) to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and re-

iefs, by such guileful, covinous or fraudulent devices and practices, as is aforesaid, are, shall or might be in any wise disturbed, hindred, delayed or defrauded) to be clearly and utterly void, frustrate and of none effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

III. And be it further enacted by the authority aforesaid, That all and every the parties to such feigned, covinous or fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions and other things before expressed, and being privy and knowing of the same, or any of them; (2) which at any time after the tenth day of *June* next coming shall wittingly and willingly put in ure, avow, maintain, justify or defend the same, or any of them, as true, simple, and done, had or made *bond fide* and upon good consideration; (3) or shall alien or assign any the lands, tenements, goods, leases or other things before-mentioned, to him or them conveyed as is aforesaid, or any part thereof; (4) shall incur the penalty and forfeiture of one year's value of the said lands, tenements and hereditaments, leases, rents, commons or other profits, of or out of the same; (5) and the whole value of the said goods and chattels; (6) and also so much money as are or shall be contained in any such covinous and feigned bond; (7) the one moiety whereof to be to the Queen's majesty, her heirs and successors, and the other moiety to the party or parties grieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges and other things aforesaid, to be recovered in any of the Queen's courts of record by action of debt, bill, plaint or information, wherein no essoin, protection or wager of law shall be admitted for the defendant or defendants; (8) and also being thereof lawfully convicted, shall suffer imprisonment for one half year without bail or mainprise.

VI. Provided also, and be it enacted by the authority aforesaid, That this act, or anything therein contained, shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels, had, made, conveyed or assured, or hereafter to be had, made, conveyed or assured, which estate or interest is or shall be upon good consideration and *bond fide* lawfully conveyed or assured to any person or persons, or bodies politic or corporate, not having at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such covin, fraud or collusion as is aforesaid; anything before mentioned to the contrary hereof notwithstanding.

## 18 ELIZ. CAP. 14. [A.D. 1576.]

*An act for reformation of jeofails.*

Be it enacted by the Queen's most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That if any verdict of twelve men or more shall be hereafter given in any action, suit, bill, plaint or demand, in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any default in form, or lack of form, touching false *Latin* or variance from the register, or other defaults in form, in any writ original or judicial, count, declaration, plaint, bill, suit or demand, or for want of any writ original or judicial, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process, upon or after any *aid prier* or *voucher*, nor any such record or judgment after verdict to be given hereafter, shall be reversed for any the defects or causes aforesaid; any law, statute or usage to the contrary notwithstanding.

II. Provided always, and be it further enacted by the authority aforesaid, That this act, or anything therein contained, shall not extend to any writ, declaration or suit of appeal of felony or murder, nor to any indictment or presentment of felony, murder, treason or other matter, nor to any process upon any of them, nor to any writ, bill, action or information upon any popular or penal statute; anything aforesaid to the contrary notwithstanding.

## 27 ELIZ. CAP. 4. [A.D. 1585.]

*An act against covinous and fraudulent conveyances.*

Forasmuch as not only the Queen's most excellent majesty, but also divers of her Highness good and loving subjects, and bodies politick and corporate, after conveyances obtained, or to be obtained, and purchases made or to be made, of lands, tenements, leases, estates and hereditaments, for money or other good considerations, may have, incur and receive great loss and prejudice by reason of fraudulent and covinous conveyances, estates, gifts, grants, charges and limitations of uses heretofore made or hereafter to be made, of, in or out of lands, tenements or hereditaments so purchased or to be purchased: (2) which said gifts, grants, charges, estates, uses and conveyances

were, or hereafter shall be, meant and intended by the parties that so make the same to be fraudulent and covinous, of purpose and intent to deceive such as have purchased or shall purchase the same; (3) or else by the secret intent of the parties the same be to their own proper use, and at their free disposition, (4) coloured nevertheless by a fained countenance and show of words and sentences, as though the same were made *bond fide*, for good causes, and upon just and lawful considerations:

II. For remedy of which inconveniences, and for the avoiding of such fraudulent, fained and covinous conveyances, gifts, grants, charges, uses and estates, and for the maintenance of upright and just dealing in the purchasing of lands, tenements and hereditaments; (2) be it ordained and enacted by the authority of this present parliament, That all and every conveyance, grant, charge, lease, estate, incumbrance and limitation of use or uses, of, in or out of any lands, tenements or other hereditaments whatsoever, had or made any time heretofore sithence the beginning of the Queen's majesty's reign that now is, or at any time hereafter to be had or made, for the intent and of purpose to defraud and deceive such person or persons, bodies politick or corporate, as have purchased or shall afterwards purchase in fee-simple, fee-tail, for life, lives or years, the same lands, tenements and hereditaments, or any part or parcel thereof, so formerly conveyed, granted, leased, charged, incumbered or limited in use, (3) or to defraud and deceive such as have or shall purchase any rent, profit or commodity in or out of the same, or any part thereof, (4) shall be deemed and taken only as against that person and persons, bodies politick and corporate, his and their heirs, successors, executors, administrators and assigns, and against all and every other person and persons lawfully having or claiming by, from or under them, or any of them, which have purchased or shall hereafter so purchase for money or other good consideration, the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in or out of the same, to be utterly void, frustrate and of none effect; (5) any pretence, colour, fained consideration, or expressing of any use or uses to the contrary notwithstanding.

III. And be it further enacted by the authority aforesaid, That all and every the parties to such fained, covinous and fraudulent gifts, grants, leases, charges or conveyances before expressed, or being privy and knowing of the same or any of them, which after the twentieth day of April next coming shall wittingly and willingly put in ure,

avow, maintain, justify or defend the same or any of them, as true, simple, and done, had or made, *bond fide*, or upon good consideration, to the disturbance or hindrance of the said purchaser or purchasers, lessees or grantees, or of or to the disturbance or hindrance of their heirs, successors, executors, administrators or assigns, or such as have or shall lawfully claim anything by, from or under them, or any of them shall incur the penalty and forfeiture of one year's value of the said lands, tenements and hereditaments so purchased or charged ; (2) the one moiety whereof to be to the Queen's majesty, her heirs and successors, and the other moiety to the party or parties grieved by such fained and fraudulent gift, grant, lease, conveyance, incumbrance or limitation of use, to be recovered in any of the Queen's courts of record, by action of debt, bill, plaint or information, wherein no essoin, protection or wager of law shall be admitted for the defendant or defendants ; (3) and also being thereof lawfully convicted, shall suffer imprisonment for one half year without bail or mainprize.

IV. Provided also, and be it enacted by the authority aforesaid, That this act or anything therein contained shall not extend or be construed to impeach, defeat, make void or frustrate any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest or limitation of use or uses, of, in, to or out of any lands, tenements or hereditaments heretofore at any time had or made, or hereafter to be had or made, upon or for good consideration and *bond fide*, to any person or persons, bodies politick or corporate ; anything before-mentioned to the contrary hereof notwithstanding.

V. And be it further enacted by the authority aforesaid, That if any person or persons have heretofore sithence the beginning of the Queen's majesty's reign that now is, made or hereafter shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance of, in or out of any lands, tenements or hereditaments, with any clause, provision, article or condition of revocation, determination or alteration, at his or their will or pleasure, of such conveyance, assurance, grants, limitations of uses or estates of, in or out of the said lands, tenements or hereditaments, or of, in or out of any part or parcel of them, contained or mentioned in any writing, deed or indenture of such assurance, conveyance, grant or gift ; (2) and after such conveyance, grant, gift, demise, charge, limitation of uses or assurance so made or had, shall or do bargain, sell, demise, grant, convey or charge, the same lands, tenements or hereditaments, or any part or parcel thereof, to any person or persons, bodies politick

and corporate, for money or other good consideration paid or given (the said first conveyance, assurance, gift, grant, demise, charge or limitation, not by him or them revoked, made void or altered, according to the power and authority reserved or expressed unto him or them in and by the said secret conveyance, assurance, gift or grant,) (3) That then the said former conveyance, assurance, gift, demise and grant, as touching the said lands, tenements and hereditaments, so after bargained, sold, conveyed, demised or charged, against the said bargainees, vendees, lessees, grantees and every of them, their heirs, successors, executors, administrators and assigns, and against all and every person and persons which have, shall or may lawfully claim anything, by, from or under them or any of them, shall be deemed, taken and adjudged to be void, frustrate, and of none effect, by virtue and force of this present act.

VI. Provided nevertheless, That no lawful mortgage made or to be made *bona fide*, and without fraud or covin, upon good consideration, shall be impeached or impaired by force of this act, but shall stand in the like force and effect as the same should have done if this act had never been had nor made; anything in this act to the contrary in any wise notwithstanding.

#### CAP. 5.

##### *An act for furtherance of justice, in case of demurrer and pleadings.*

Forasmuch as excessive charges and expenses, and great delay and hindrance of justice hath grown in actions and suits between the subjects of this realm, by reason that upon some small mistaking or want of form in pleading, judgments are often reversed by writs of error, and oftentimes upon demurrs in law given otherwise than the matter in law and very right of the cause doth require, whereby the parties are constrained either utterly to lose their right, or else after long time and great trouble and expenses, to renew again their suits: (2) for remedy whereof, be it enacted by the Queen's most excellent majesty, the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That from henceforth, after demurrer joined and entred in any action or suit in any court of record within this realm, the judges shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, defect or want of form in any writ, return, plaint, declaration

or other pleading, process or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express together with his demurrer; (3) and that no judgment to be given shall be reversed by any writ of error, for any such imperfection, defect or want of form as is aforesaid, except such only as is before excepted.

43 ELIZ. CAP. 2. § 7.\* [A.D. 1601.]

*An act for the relief of the poor.*

VII. And be it further enacted, That the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter-sessions shall be assessed; (2) upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein.

CAP. 6.†

*An act to avoid trifling and frivolous suits.*

II. And be it further enacted by the authority aforesaid, If upon any action personal to be brought in any her Majesty's courts at Westminster, not being for any title or interest of lands, nor concerning the freehold or inheritance of any lands, nor for any battery, it shall appear to the judges for the same court, and so signified or set down by the justices before whom the same shall be tried, that the debt or damages to be recovered therein in the same court, shall not amount to the sum of forty shillings or above, That in every such case the judges and justices before whom any such action shall be pursued, shall not award for costs to the party plaintiff any greater or more costs than the sum of the debt or damages so recovered shall amount unto, but less at their discretions.

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\* [See 31 & 32 Vict. c. 122, §§ 36, 37.]

Poor Relief Act: § 36. Justices to make Order of Maintenance; § 37. Parents neglecting their Children liable to Punishment.

† 3 Car. I. c. 4, § 22 (7); 16 Car. I. c. 4.

## CAP. 8.

Forasmuch as it is often put in ure, to the defrauding of creditors, that such persons as are to have the administration of the goods of others dying intestate committed unto them, if they require it, will not accept the same, but suffer or procure the administration to be granted to some stranger of mean estate, and not of kin to the intestate, from whom themselves or others by their means do take deeds of gifts and authorities by letter of attorney, whereby they obtain the state of the intestate into their hands, and yet stand not subject to pay any debts owing by the same intestate, and so the creditors for lack of knowledge of the place of habitation of the administrator, cannot arrest him nor sue him; and if they fortune to find him out, yet for lack of ability in him to satisfy of his own goods, the value that he hath conveyed away of the intestates goods, or released of his debts by way of wasting, the creditors cannot have or recover their just and due debts:

II. Be it enacted by the authority of this present parliament, That every person and persons that hereafter shall obtain, receive and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any fraud, as is aforesaid, or without such valuable consideration as shall amount to the value of the same goods or debts, or near thereabouts, (except it be in or towards satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the intestate at the time of his decease) shall be charged and chargeable as executor of his own wrong; (2) and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting nevertheless to and for himself allowance of all just, due and principal debts upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors or administrators may and ought to have and pay by the laws and statutes of this realm.

## 21 JAC. I. CAP. 16. [A.D. 1623.]

*An act for limitation of actions, and for avoiding of suits in law.*

For quieting of mens estates, and avoiding of suits, be it enacted by the King's most excellent majesty, the lords spiritual and temporal, and commons, in this present parliament assembled, That all writs of

*formedon in descender, formedon in remainder, and formedon in reverter*, at any time hereafter to be sued or bought, of or for any manors, lands, tenements or hereditaments, whereto any person or persons now hath or have any title, or cause to have or pursue any such writ, shall be sued and taken within twenty years next after the end of this present session of parliament: and after the said twenty years expired, no such person or persons, or any of their heirs, shall have or maintain any such writ, of or for any of the said manors, lands, tenements or hereditaments; (2) and that all writs of *formedon in descender, formedon in remainder, and formedon in reverter*, of any manors, lands, tenements, or other hereditaments whatsoever, at any time hereafter to be sued or brought by occasion or means of any title or cause hereafter happening, shall be sued and taken within twenty years next after the title and cause of action first descended or fallen, and at no time after the said twenty years; (3) and that no person or persons that now hath any right or title of entry into any manors, lands, tenements or hereditaments now held from him or them, shall thereinto enter, but within twenty years next after the end of this present session of parliament, or within twenty years next after any other title of entry accrued; (4) and that no person or persons shall at any time hereafter make any entry into any lands, tenements or hereditaments, but within twenty years next after his or their right or title which shall hereafter first descend or accrue to the same; and in default thereof, such persons so not entring, and their heirs, shall be utterly excluded and disabled from such entry after to be made; any former law or statute to the contrary notwithstanding.

II. Provided nevertheless, That if any person or persons, that is or shall be entitled to such writ or writs, or that hath or shall have such right or title of entry, be or shall be at the time of the said right or title first descended, accrued, come or fallen, within the age of one and twenty years, *feme covert, non compos mentis*, imprisoned or beyond the seas, that then such person or persons, and his and their heir and heirs, shall or may, notwithstanding the said twenty years be expired, bring his action, or make his entry, as he might have done before this act; (2) so as such person and persons, or his or their heir and heirs, shall within ten years next after his and their full age, discoverture, coming of sound mind, enlargement out of prison, or coming into this realm, or death, take benefit of and sue forth the same, and at no time after the said ten years.

III. And be it further enacted, That all actions of trespass *quare*

*clausum fregit*, all actions of trespass, detinue, action sur trover, and replevin for taking away of goods and cattle, all actions of account, and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty; all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding and imprisonment, or any of them which shall be sued or brought at any time after the end of this present session of parliament, shall be commenced and sued within the time and limitation hereafter expressed, and not after (that is to say) (2) the said actions upon the case (other than for slander) and the said actions for account, and the said actions for trespass, debt, detinue and replevin for goods or cattle, and the said action of trespass *quare clausum fregit*, within three years next after the end of this present session of parliament, or within six years next after the cause of such actions or suit, and not after; (3) and the said actions of trespass, of assault, battery, wounding, imprisonment or any of them, within one year next after the end of this present session of parliament, or within four years next after the cause of such actions or suit, and not after; (4) and the said actions upon the case for words, within one year after the end of this present session of parliament, or within two years next after the words spoken, and not after.

IV. And nevertheless be it enacted, That if in any the said actions or suits, judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alledged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill; or if any the said actions shall be brought by original, and the defendant therein be outlawed, and shall after reverse the outlawry; that in all such cases the party plaintiff, his heirs, executors or administrators, as the case shall require, may commence a new action or suit, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or outlawry reversed, and not after.

V. And be it further enacted, That in all actions of trespass *quare clausum fregit*, hereafter to be brought, wherein the defendant or defendants shall disclaim in his or their plea, to make any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of suf-

ficient amends for such trespass before the action brought, whereupon or upon some of them, the plaintiff or plaintiffs shall be enforced to join issue ; (2) and if the said issue be found for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited, the plaintiff or plaintiffs shall be clearly barred from the said action or actions, and all other suit concerning the same.

VI. And be it further enacted by the authority aforesaid, That in all actions upon the case for slanderous words, to be sued or prosecuted by any person or persons in any the courts of record at *Westminster*, or in any courts whatsoever that hath power to hold plea of the same, after the end of this present session of parliament, if the jury upon the trial of the issue in such action, or the jury that shall enquire of the damages, do find or assess the damages under 40 s., then the plaintiff or plaintiffs in such action shall have and recover only so much costs as the damages so given or assessed amount unto, without any further increase of the same ; any law, statute, custom or usage to the contrary in any wise notwithstanding.

VII. Provided nevertheless, and be it further enacted, That if any person or persons that is or shall be entituled to any such action of trespass, detinue, action sur trover, replevin, actions of accounts, actions of debts, actions of trespass for assault, menace, battery, wounding or imprisonment, actions upon the case for words, be or shall be at the time of any such cause of action given or accrued, fallen or come, within the age of twenty-one years, *feme covert, non compos mentis*, imprisoned or beyond the seas ; that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full age, discovert, of sane memory, at large, and returned from beyond the seas, as other persons having no such impediment should have done.\*

#### 12 CAR. II. CAP. 24. [A.D. 1660.]

*An act for taking away the court of wards and liveries, and tenures in capite, and by knights-service, and purveyance, and for settling a revenue upon his Majesty in lieu thereof.*

Whereas it has been found by former experience, That the courts of wards and liveries, and tenures by knights-service, either of the

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\* 20 H. III. c. 8 ; 3 Ed. I. c. 39 ; 32 H. VIII. c. 2 ; 1 Ma. I. Sess. 2, c. 5.

King or others, or by knights-service *in capite*, or socage *in capite* of the King, and the consequents upon the same, have been much more burdensome, grievous and prejudicial to the kingdom, than they have been beneficial to the King: (2) And whereas since the intermission of the said court, which hath been from the four and twentieth day of *February* which was in the year of our Lord one thousand six hundred forty and five, many persons have by will and otherwise made disposal of their lands held by knights-service, whereupon divers questions might possibly arise, unless some seasonable remedy be taken to prevent the same; (3) be it therefore enacted by the King our sovereign lord, with the assent of the lords and commons in parliament assembled, and by the authority of the same, and it is hereby enacted, That the court of wards and liveries, and all wardships, liveries, primer-seisins, and ousterle mains, values and forfeitures of marriages, by reason of any tenure of the King's Majesty, or of any other by knights-service, and all mean rates, and all other gifts, grants, charges incident or arising, for or by reason of wardships, liveries, primer-seisins, or ousterle mains be taken away and discharged, and are hereby enacted to be taken away and discharged, from the said twenty-fourth day of *February* one thousand six hundred forty-five; any law, statute, custom or usage to the contrary hereof in any wise notwithstanding: (4) And that all fines for alienations, seizures and pardons for alienations, tenure by homage, and all charges incident or arising, for or by reason of wardship, livery, primer-seisin, or ousterle main, or tenure by knights-service, escuage, and also, *aid pur file marrier*, and *pur fair fitz chivalier*, all other charges incident thereunto, be likewise taken away and discharged, from the said twenty-fourth day of *February* one thousand six hundred forty and five; any law, statute, custom or usage to the contrary hereof in any wise notwithstanding: (5) And that all tenures by knights-service of the King, or of any other person, and by knights-service *in capite*, and by socage *in capite* of the King, and the fruits and consequents thereof, happened or which shall or may hereafter happen or arise thereupon or thereby, be taken away and discharged, any law, statute, custom or usage to the contrary hereof in anywise notwithstanding; (6) and all tenures of any honours, manors, lands, tenements or hereditaments, or any estate of any inheritance at the common law, held either of the King, or of any other person or persons, bodies politick or corporate are hereby enacted to be turned into free and common socage, to all intents and purposes, from the said twenty-fourth day of *February* one thousand

six hundred forty-five, and shall be so construed, adjudged and deemed to be from the said twenty-fourth day of *February* one thousand six hundred forty-five, and forever thereafter turned into free and common socage; any law, statute, custom or usage to the contrary hereof in any wise notwithstanding.

II. And that the same shall forever hereafter stand and be discharged of all tenure by homage, escuage, voyages royal and charges for the same, wardships incident to tenure by knights-service, and values and forfeitures of marriage, and all other charges incident to tenure by knights-service, and of and from *aide pur file marrier* and *aide pur fair fitz chivalier*; any law, statute, usage or custom to the contrary in any wise notwithstanding: (2) And that all conveyances and devises of any manors, lands, tenements and hereditaments made since the said twenty-fourth day of *February*, shall be expounded to be of such effect, as if the same manors, lands, tenements and hereditaments had been then held and continued to be holden in free and common socage only; any law, statute, custom or usage to the contrary hereof in any wise notwithstanding.

III. And be it further ordained and enacted by the authority of this present parliament, That one act made in the reign of King *Henry* the Eighth, intituled, *An act for the establishment of the court of the King's wards*; and also one act of parliament made in the thirty-third year of the reign of the said King *Henry* the Eighth, concerning the officers of the court of wards and liveries, and every clause, article and matter in the said acts contained, shall from henceforth be repealed and utterly void.

IV. And be it further enacted by the authority aforesaid, That all tenures hereafter to be created by the King's majesty, his heirs or successors, upon any gifts or grants of any manors, lands, tenements or hereditaments, of any estate of inheritance at the common law, shall be in free and common socage, and shall be adjudged to be in free and common socage only, and not by knights-service or *in capite*, and shall be discharged of all wardship, value and forfeiture of marriage, livery, primer-seisin, *ousterlemain*, *aide pur faier fitz chivalier*, and *pur file marrier*; any law, statute or reservation to the contrary thereof in any wise notwithstanding.

V. Provided nevertheless, and be it enacted, That this act, or any thing herein contained, shall not take away, nor be construed to take away, any rents certain, heriots or suits of court belonging or incident to any former tenure now taken away or altered by virtue of this

act, or other services incident or belonging to tenure in common socage, due or to grow due to the King's majesty, or mean lords, or other private person, or the fealty and distresses incident thereunto; (2) and that such relief shall be paid in respect of such rents as is paid in case of a death of a tenant in common socage.

VII. Provided always, and be it enacted, That any thing herein contained shall not take away, nor be construed to take away, any fines for alienation due by particular customs of particular manors and places, other than fines for alienations of lands or tenements holden immediately of the King *in capite*.

VIII. Provided also, and be it further enacted, That this act, or anything therein contained, shall not take away nor be construed to take away, tenures in *Frank Almoign*, or to subject them to any greater or other services than they now are; (2) nor to alter or change any tenure by copy of court roll, or any services incident thereunto; (3) nor to take away the honorary services of grand-sergeantry, other than of wardship, marriage and value of forfeiture of marriage, escuage, voyages royal and other charges incident to tenure by knights-service; and other than *aide pur faier fitz chivalier* and *aide pur file marrier*.

VIII. And be it further enacted by the authority aforesaid, That where any person hath or shall have any child or children under the age of one and twenty years, and not married at the time of his death, That it shall and may be lawful to and for the father of such child or children, whether born at the time of the decease of the father, or at that time in *ventre sa mere*, or whether such father be within the age of one and twenty years, or of full age, by his deed executed in his life-time, or by his last will and testament in writing, in the presence of two or more credible witnesses, in such manner, and from time to time as he shall respectively think fit, to dispose of the custody and tuition of such child or children, for and during such time as he or they shall respectively remain under the age of one and twenty years, or any lesser time, to any person or persons in possession or remainder, other than popish recusants; (2) and that such disposition of the custody of such child or children made since the twenty-fourth of February one thousand six hundred forty-five, or hereafter to be made, shall be good and effectual against all and every person or persons claiming the custody or tuition of such child or children as guardian in socage or otherwise: (3) And that such person or persons, to whom the custody of such child or children hath been or

shall be so disposed or devised as aforesaid, shall and may maintain an action of ravishment of ward or trespass, against any person or persons which shall wrongfully take away or detain such child or children, for the recovery of such child or children; (4) and shall and may recover damages for the same in the said action, for the use and benefit of such child or children.

IX. And be it further enacted, That such person or persons, to whom the custody of such child or children hath been or shall be so disposed or devised, shall and may take into his or their custody to the use of such child or children, the profits of all lands, tenements and hereditaments of such child or children; and also the custody, tuition and management of the goods, chattels and personal estate of such child or children, till their respective age of one and twenty years, or any lesser time, according to such disposition aforesaid; (2) and may bring such action or actions in relation thereunto, as by law a guardian in common socage might do.

X. Provided also, That this act or anything therein contained, shall not extend to alter or prejudice the custom of the city of *London*, nor of any other city or town corporate, or of the town of *Berwick upon Tweed*, concerning orphans; nor to discharge any apprentice from his apprenticeship.

XI. Provided also, That neither this act, nor anything therein contained, shall infringe or hurt any title of honour, feudal or other, by which any person hath or may have right to sit in the lords house of parliament, as to his or their title of honour, or sitting in parliament, and the privilege belonging to them as peers; this act, or anything therein contained to the contrary in any wise notwithstanding.

22-23 CAR. II. CAP. 9. [A.D. 1670.]

*An act for laying impositions on proceedings at law.*

And for prevention of trivial and vexatious suits in law, whereby many good subjects of this realm have been and are daily undone, contrary to the intention of an act made in the three and fortieth year of Queen *Elizabeth*, for avoiding of infinite numbers of small and trifling suits commenced in the courts at *Westminster*; (2) be it further enacted, for making the said law effectual, That from and after the first of *May* aforesaid [1680] in all actions of trespass, assault and battery, other personal actions, wherein the judge at the trial of the cause

shall not find and certify under his hand upon the back of the record, that an assault and battery was sufficiently proved by the plaintiff against the defendant, or that the freehold or title of the land mentioned in the plaintiff's declaration was chiefly in question, the plaintiff in such action, in case the jury shall find the damages to be under the value of forty shillings, shall not recover or obtain more costs of suit than the damages so found shall amount unto: (3) and if any more costs in any such action shall be awarded, the judgment shall be void, and the defendant is hereby acquitted of and from the same, and may have his action against the plaintiff for such vexatious suit, and recover his damages and costs of such his suit in any of the said courts of record.

## CAP. 10.

*An act for the better settling of intestates estates.*

Be it enacted by the King's most excellent majesty, with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, That all ordinaries, as well the judges of the prerogative courts of *Canterbury* and *York* for the time being, as all other ordinaries and ecclesiastical judges, and every of them, having power to commit administration of the goods of persons dying intestate, shall and may upon their respective granting and committing of administration of the goods of persons dying intestate, after the first day of *June* one thousand six hundred seventy and one, of the respective person or persons to whom any administration is to be committed, take sufficient bonds with two or more able sureties, respect being had to the value of the estate, in the name of the ordinary, with the condition in form and manner following, *mutatis mutandis, viz.*,

II. The condition of this obligation is such, That if the within bounden A. B. administrator of all and singular the goods, chattels and credits of C. D. deceased, do make or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come to the hands, possession or knowledge of him the said A. B. or into the hands and possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited into the registry of court, at or before the                    day of                    next ensuing; (2)  
and the same goods, chattels and credits, and all other the goods, chattels and credits of the said deceased at the time of his death,

which at any time after shall come to the hands or possession of the said A. B. or into the hands and possession of any other person or persons for him, do well and truly administer according to law; (3) and further do make or cause to be made, a true and just account of his said administration, at or before the              day of              . And all the rest and residue of the said goods, chattels and credits which shall be found remaining upon the said administrator's account, the same being first examined and allowed of by the judge or judges for the time being of the said court, shall deliver and pay unto such person or persons respectively, as the said judge or judges by his or their decree or sentence, pursuant to the true intent and meaning of this act, shall limit and appoint. (4) And if it shall hereafter appear, That any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said A. B. within-bounden, being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court; then this obligation to be void and of none effect, or else to remain in full force and virtue.

III. Which bonds are hereby declared and enacted to be good to all intents and purposes, and pleadable in any courts of justice: (2) and also that the said ordinaries and judges respectively, shall and may, and are enabled to proceed and call such administrators to account, for and touching the goods of any person dying intestate; (3) and upon hearing and due consideration thereof, to order and make just and equal distribution of what remaineth clear (after all debts, funerals and just expenses of every sort first allowed and deducted) amongst the wife and children, or childrens children, if any such be, or otherwise to the next of kindred to the dead person in equal degree, or legally representing their stocks *pro suo cuique jure*, according to the laws in such cases, and the rules and limitation hereafter set down; and the same distributions to decree and settle, and to compel such administrators to observe and pay the same, by the due course of his Majesty's ecclesiastical laws: (4) saving to every one, supposing him or themselves aggrieved, right of appeal as was always in such cases used.

IV. Provided, That this act, or anything herein contained, shall not anyways prejudice or hinder the customs observed within the city of *London* or within the province of *York* or other places, having known and received customs peculiar to them, but that the same

customs may be observed as formerly ; anything herein contained to the contrary notwithstanding.

V. Provided always, and be it enacted by the authority aforesaid, That all ordinaries and every other person who by this act is enabled to make distribution of the surplusage of the estate of any person dying intestate, shall distribute the whole surplusage of such estate or estates in manner and form following ; that is to say, (2) one third part of the said surplusage to the wife of the intestate, and all the residue by equal portions, to and amongst the children of such persons dying intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children (not being heir at law) who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his life-time, by portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made : (3) and in case any child, other than the heir at law, who shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his life-time by portion not equal to the share which will be due to the other children by such distribution as aforesaid ; then so much of the surplusage of the estate of such intestate, to be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the life-time of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated : (4) but the heir at law, notwithstanding any land that he shall have by descent or otherwise from the intestate, is to have an equal part in the distribution with the rest of the children, without any consideration of the value of the land which he hath by descent, or otherwise from the intestate.

VI. And in case there be no children nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, the residue of the said estate to be distributed equally to every of the next of kindred of the intestate, who are in equal degree and those who legally represent them.

VII. Provided, That there be no representations admitted among collaterals after brothers and sisters children : (2) and in case there be no wife, then all the said estate to be distributed equally to and amongst the children : (3) and in case there be no child, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever.

VIII. Provided also, and be it likewise enacted by the authority

aforesaid, To the end that a due regard be had to creditors, that no such distribution of the goods of any person dying intestate be made till after one year be fully expired after the intestate's death; (2) and that such and every one to whom any distribution and share shall be allotted, shall give bond with sufficient sureties in the said courts, that if any debt or debts truly owing to the intestate shall be afterwards sued for and recovered, or otherwise duly made to appear; that then and in every such case he or she shall respectively refund and pay back to the administrator his or her rateable part of that debt or debts, and of the costs of suit and charges of the administrator by reason of such debt, out of the part and share so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made as aforesaid.

IX. Provided always, and be it enacted by the authority aforesaid, That in all cases where the ordinary hath used heretofore to grant administration *cum testamento annexo*, he shall continue so to do, and the will of the deceased in such testament expressed shall be performed and observed in such manner as it should have been if this act had never been made.

29 CAR. II. CAP. 3. [A.D. 1676.]

*An act for prevention of frauds and perjuries.*

For prevention of many fraudulent practices, which are commonly endeavoured to be upheld by perjury and subornation of perjury; (2) be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority of the same, That from and after the four and twentieth day of June, which shall be in the year of our Lord one thousand six hundred seventy and seven, all leases, estates, interests of freehold, or terms of years, or any uncertain interest of, in, to or out of any messuages, manors, lands, tenements or hereditaments, made or created by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not either in law or equity be deemed or taken to have any other or greater force or effect; any consideration for making any such parol leases or estates, or any former law or usage, to the contrary notwithstanding.

II. Except nevertheless all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord, during such term, shall amount unto two third parts at the least of the full improved value of the thing demised.

III. And moreover, That no leases, estates or interests, either of freehold, or terms of years, or any uncertain interest, not being copy-hold or customary interest, of, in, to or out of any messuages, manors, lands, tenements or hereditaments, shall at any time after the said four and twentieth day of *June* be assigned, granted or surrendred, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendring the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law.

IV. And be it further enacted by the authority aforesaid, That from and after the said four and twentieth day of *June* no action shall be brought whereby to charge any executor or administrator upon any special promise, to answer damages out of his own estate; (2) or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person; (3) or to charge any person upon any agreement made upon consideration of marriage; (4) or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them; (5) or upon any agreement that is not to be performed within the space of one year from the making thereof; (6) unless the agreement upon which such action shall be brought, or some *memorandum* or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

V. And be it further enacted by the authority aforesaid, That from and after the said four and twentieth day of *June* all devises and bequests of any lands or tenements, devisable either by force of the statute of wills, or by this statute, or by force of the custom of *Kent*, or the custom of any borough, or any other particular custom, shall be in writing, and signed by the party so devising the same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor by three or four credible witnesses, or else they shall be utterly void and of none effect.

VI. And moreover, no devise in writing of lands, tenements or hereditaments, nor any clause thereof, shall at any time after the said four and twentieth day of *June* be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or

by burning, cancelling, tearing or obliterating the same by the testator himself, or in his presence and by his directions and consent; (2) but all devises and bequests of lands and tenements shall remain and continue in force, until the same be burnt, cancelled, torn or obliterated by the testator, or his directions, in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in the presence of three or four witnesses, declaring the same; any former law or usage to the contrary notwithstanding.

VII. And be it further enacted by the authority aforesaid, That from and after the said four and twentieth day of *June* all declarations or creations of trusts or confidences of any lands, tenements or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect.

VIII. Provided always, That where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by an act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made; any thing herein before contained to the contrary notwithstanding.

IX. And be it further enacted, That all grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same, or by such last will or devise, or else shall likewise be utterly void and of none effect.

X. And be it further enacted by the authority aforesaid, That from and after the said four and twentieth day of *June* it shall and may be lawful for every sheriff or other officer to whom any writ or precept is or shall be directed, at the suit of any person or persons, of, for and upon any judgment, statute or recognizance hereafter to be made or had, to do, make and deliver execution unto the party in that behalf suing, of all such lands, tenements, rectories, tithes, rents and hereditaments, as any other person or persons be in any manner of wise seised or possessed, or hereafter shall be seised or possessed, in trust for him against whom execution is so sued, like as the sheriff or other officer might or ought to have done, if the said party against whom execution hereafter shall be so sued, had been seised of such lands, tenements, rectories, tithes, rents or other hereditaments of such estate as they be seised of in trust for him at the time of the said exe-

cution sued ; (2) which lands, tenements, rectories, tithes, rents and other hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed freed and discharged from all incumbrances of such person or persons as shall be so seized or possessed in trust for the person against whom such execution shall be sued ; (3) and if any *cestuy que trust* hereafter shall die, leaving a trust in fee-simple to descend to his heir, there and in every such case such trust shall be deemed and taken, and is hereby declared to be, assets by descent, and the heir shall be liable to and chargeable with the obligation of his ancestors for and by reason of such assets, as fully and amply as he might or ought to have been, if the estate in law had descended to him in possession in like manner as the trust descended ; any law, custom or usage to the contrary in any wise notwithstanding.

XI. Provided always, That no heir that shall become chargeable by reason of any estate or trust made assets in his hands by this law, shall by reason of any kind of plea or confession of the action, or suffering judgment by *nient dedire*, or any other matter, be chargeable to pay the condemnation out of his own estate ; (2) but execution shall be sued of the whole estate so made assets in his hands by descent, in whose hands soever it shall come after the writ purchased, in the same manner as it is to be at and by the common law, where the heir at law pleading a true plea, judgment is prayed against him thereupon ; any thing in this present act contained to the contrary notwithstanding.

XII. And for the amendment of the law in the particulars following ; (2) be it further enacted by the authority aforesaid, That from henceforth any estate *pur autre vie* shall be devisable by a will in writing, signed by the party so devising the same, or by some other person in his presence and by his express directions, attested and subscribed in the presence of the devisor by three or more witnesses ; (3) and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a special occupancy as assets by descent, as in case of lands in fee simple ; (4) and in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be assets in their hands.

XVII. And be it further enacted by the authority aforesaid, That from and after the said four and twentieth day of *June* no contract for the sale of any goods, wares and merchandizes, for the price of ten pounds sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the

same, or give something in earnest to bind the bargain, or in part of payment, or that some note or *memorandum* in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

XIX. And for preventien of fraudulent practices in setting up nuncupative wills, which have been the occasion of much perjury; (2) be it enacted by the authority aforesaid, That from and after the aforesaid four and twentieth day of *June* no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of thirty pounds, that is not proved by the oaths of three witnesses (at the least) that were present at the making thereof; (3) nor unless it be proved that the testator at the time of pronouncing the same, did bid the persons present, or some of them, bear witness, that such was his will, or to that effect; (4) nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she hath been resident for the space of ten days or more next before the making of such will, except where such person was surprized or taken sick, being from his own home, and died before he returned to the place of his or her dwelling.

XX. And be it further enacted, That after six months passed after the speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony, or the substance thereof, were committed to writing within six days after the making of the said will.

XXI. And be it further enacted, That no letters testamentary or probate of any nuncupative will shall pass the seal of any court, till fourteen days at the least after the decease of the testator be fully expired; (2) nor shall any nuncupative will be at any time received to be proved, unless process have first issued to call in the widow, or next of kindred to the deceased, to the end they may contest the same, if they please.

XXII. And be it further enacted, That no will in writing concerning any goods or chattels, or personal estate, shall be repealed, nor shall any clause, devise or bequest therein, be altered or changed by any words, or will by word of mouth only, except the same be in the life of the testator committed to writing, and after the writing thereof read unto the testator, and allowed by him, and proved to be so done by three witnesses at the least.

XXIII. Provided always, That notwithstanding this act, any sol-

dier being in actual military service, or any mariner or seaman being at sea, may dispose of his moveables, wages and personal estate, as he or they might have done before the making of this act.

XXIV. And it is hereby declared, That nothing in this act shall extend to alter or change the jurisdiction or right of probate of wills concerning personal estates, but that the prerogative court of the archbishop of *Canterbury*, and other ecclesiastical courts, and other courts having right to the probate of such wills, shall retain the same right and power as they had before, in every respect; subject nevertheless to the rules and directions of this act.

XXV. And for the explaining one act of this present parliament, intituled, *An act for the better settling of intestates estates*; (2) be it declared by the authority aforesaid, That neither the said act, nor any thing therein contained, shall be construed to extend to the estates of feme coverts that shall die intestate, but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same, as they might have done before the making of the said act.\*

30 CAR. II. CAP. 7. [A.D. 1677.]

*An act to enable creditors to recover their debts of the executors and administrators of executors in their own wrong.*

Whereas the executors and administrators of such persons who have possessed themselves of considerable personal estates of other dead persons, and converted the same to their own use, have no remedy by the rules of the common law, as it now stands, to pay the debts of those persons whose estate hath been so converted by their testator or intestate, which hath been found very mischievous, and many creditors defeated of their just debts, although their debtors left behind them sufficient to satisfy the same, with a great overplus:

II. For remedy whereof, be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by the authority thereof, That all and every the executors and administrators of any person or persons, who as executor or executors in his or their own wrong, or administrators, shall from and after the first day of *August* next ensuing waste or convert any goods, chattels, estate or assets of any person deceased, to their own use, shall be

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\* Made perpetual by 1 Jac. II. c. 17, § 5.

liable and chargeable in the same manner as their testator or intestate would have been if they had been living. (2) This act to continue in force for three years, and from thence to the end of the next session of parliament, and no longer.\*

1 JAC. II. CAP. 17. [A.D. 1685.]

*An act for reviving and continuing several acts therein mentioned.*

V. And be it enacted by the authority aforesaid, That one other act made in the seventeenth year of his said late Majesty's reign, intituled, *An act for avoiding unnecessary suits and delays*, and also one other act made in the two and twentieth and three and twentieth years of his late Majesty's reign, intituled, *An act for the better settling intestates estates*, (which said latter act is explained by a clause in one other act made in the nine and twentieth year of his said late Majesty's reign, intituled, *An act for prevention of frauds and perjuries*) both which said acts, with the said clause, are continued by one other act made in the thirtieth year of his said late Majesty's reign, intituled, *An act for reviving both the said former acts*. All which said acts and clauses shall be in force, and is hereby made perpetual.

VI. Provided always, and it is hereby further enacted, That no administrator shall, from the four and twentieth day of *July* next, be cited to any the courts in the said last act mentioned, to render an account of the personal estate of his intestate (otherwise than by an inventory or inventories thereof) unless it be at the instance or prosecution of some person or persons in behalf of a minor, or having a demand out of such personal estate as a creditor or next of kin, nor be compellable to account before any the ordinaries or judges by the said last act impowered and appointed to take the same, otherwise than as is aforesaid; anything in the said last acts contained to the contrary notwithstanding.

VII. Provided also, and it is further enacted by the authority aforesaid, That if after the death of a father, any of his children shall die intestate without wife or children, in the life-time of the mother, every brother and sister, and the representatives of them, shall have an equal share with her; anything in the last mentioned acts to the contrary notwithstanding.

VIII. Provided, and it is hereby, for the determining some doubts

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\* Made perpetual and enlarged by 4 & 5 W. & M. c. 2*4*, § 12.

arising upon the acts aforementioned, for the better settling intestates estates, enacted and declared, That the clause therein, by which it is provided, that that act, or anything therein contained, should not any ways prejudice or hinder the customs observed within the city of *London*, and province of *York*, was never intended, nor shall be taken or construed to extend, to such part of any intestate's estate, as any administrator, by virtue only of being administrator, by pretence or reason of any custom, may claim to have, to exempt the same from distribution; but that such part in the hands of such administrator shall be subject to distribution as in other cases within the said act.\*

3 & 4 WM. & MARY. CAP. 14. [A.D. 1691.]

*An act for relief of creditors against fraudulent devises.*

Whereas it is not reasonable or just, that by the practice or contrivance of any debtors their creditors should be defrauded of their just debts; and nevertheless it hath often so happened that where several persons having by bonds or other specialties bound themselves and their heirs, and have afterwards died seized in fee-simple of and in manors, messuages, lands, tenements, and hereditaments, or had power or authority to dispose of or charge the same by their wills or testaments, have to the defrauding of such their creditors, by their last wills or testaments devised the same, or disposed thereof in such manner as such creditors have lost their said debts: For remedying of which, and for the maintenance of just and upright dealing,

II. Be it enacted and declared by the King's and Queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That all wills and testaments, limitations, dispositions, or appointments, of or concerning any manors, messuages, lands, tenements, or hereditaments, or of any rent, profit, term, or charge out of the same, whereof any person or persons, at the time of his, her, or their decease, shall be seized in fee-simple, in possession, reversion, or remainder, or have power to dispose of the same by his, her, or their last wills or testaments, to be made after the five and twentieth day of *March*, in the year of our Lord God one thousand six hundred ninety and two, shall be deemed and taken (only as against such creditor or creditors as aforesaid, his, her, and their

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\* *Vide* 11 Geo. IV. & 1 Wm. IV. c. 47.

heirs, successors, executors, administrators, and assigns, and every of them) to be fraudulent, and clearly, absolutely, and utterly void, frustrate, and of none effect; any pretence, colour, feigned or presumed consideration or any other matter or thing to the contrary notwithstanding.

III. And for the means that such creditors may be enabled to recover their said debts, be it further enacted by the authority aforesaid, That in the cases before mentioned, every such creditor shall and may have and maintain his, her, and their action and actions of debt, upon his, her, and their said bonds and specialties, against the heir and heirs at law of such obligor or obligors, and such devisee or devisees, jointly by virtue of this act; and such devisee or devisees shall be liable and chargeable for a false plea by him or them pleaded, in the same manner as any heir should have been for any false plea by him pleaded, or for not confessing the lands or tenements to him descended.

IV. Provided always, and be it enacted by the authority aforesaid, That where there hath been or shall be any limitation or appointment, devise or disposition, of or concerning any manors, messuages, lands, tenements, or hereditaments for the raising or payment of any real and just debt or debts, or any portion or portions, sum or sums of money, for any child or children of any person, other than the heir at law, according to, or in pursuance of, any marriage contract or agreement in writing *bond file* made before such marriage, the same and every of them shall be in full force; and the same manors, messuages, lands, tenements, and hereditaments, shall and may be holden and enjoyed by every such person or persons, his, her, and their heirs, executors, administrators, and assigns, for whom the said limitation, appointment, devise, or disposition was made, and by his, her, and their trustee or trustees, his, her, and their heirs, executors, administrators, and assigns, for such estate or interest as shall be so limited or appointed, devised or disposed, until such debt or debts, portion or portions, shall be raised, paid, and satisfied; any thing in this act contained to the contrary notwithstanding.

V. And whereas several persons being heirs at law, to avoid the payment of such just debts, as in regard of the lands, tenements, and hereditaments descending to them they have by law been liable to pay, have sold, aliened, and made over such lands, tenements, or hereditaments, before any process was, or could be issued out against them; be it further enacted by the authority aforesaid, That in all

cases where any heir at law shall be liable to pay the debts of his ancestor in regard of any lands, tenements, or hereditaments descending to him, and shall sell, aliene, or make over the same, before any action brought, or process sued out against him, that such heir at law shall be answerable for such debt or debts, in an action or actions of debt, to the value of the land so by him sold, aliened, or made over; in which cases all creditors shall be preferred, as in actions against executors and administrators, and such executions shall be taken out upon any judgment or judgments so obtained against such heir, to the value of the said land, as if the same were his own proper debt or debts; saving that the lands, tenements and hereditaments *bonâ fide* aliened before the action brought, shall not be liable to such execution.

VI. Provided always, and be it further enacted by the authority aforesaid, That where any action of debt upon any specialty is brought against any heir, he may plead *riens per descent*, at the time of the original writ brought, or the bill filed against him; anything herein contained to the contrary notwithstanding; and the plaintiff in such action may reply, that he had lands, tenements, or hereditaments, from his ancestor before the original writ brought, or bill filed; and if upon issue joined thereupon it be found for the plaintiff, the jury shall enquire of the value of the lands, tenements, or hereditaments so descended, and thereupon judgment shall be given, and execution shall be awarded as aforesaid; but if judgment be given against such heir by confession of the action, without confessing the assets descended, or upon demurrer, or *nihil dicit*, it shall be for the debt and damages, without any writ to enquire of the lands, tenements, or hereditaments so descended.

VII. Provided also, and be it further enacted, That all and every devisee and devisees, made liable by this act, shall be liable and chargeable in the same manner as the heir at law by force of this act, notwithstanding the lands, tenements, and hereditaments, to him or them devised, shall be aliened before the action brought. Provided always, That this act shall be in force for three years, and to the end of the next session of parliament after the expiration of the said three years, and no longer.\*

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\* Made perpetual by 6 & 7 Wm. III. c. 14. See 1 Wm. IV. c. 47.

[4 & 5 W. & M. CAP. 16. [A.D. 1692.]

*An act to prevent frauds by clandestine mortgages.]*

10 & 11 WM. III. CAP. 16. [A.D. 1699.]

*An act to enable posthumous children to take estates as if born in their father's lifetime.*

Whereas it often happens, that by marriage and other settlements, estates are limited in remainder to the use of the sons and daughters, the issue of such marriage, with remainders over, without limiting an estate to trustees to preserve the contingent remainders limited to such sons and daughters, by which means such sons and daughters, if they happen to be born after the decease of their father, are in danger to be defeated of their remainder by the next in remainder after them, and left unprovided for by such settlements, contrary to the intent of the parties that made those settlements: be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That where any estate already is or shall hereafter, by any marriage or other settlement, be limited in remainder to, or to the use of the first or other son or sons of the body of any person lawfully begotten, with any remainder or remainders over to, or to the use of any other person or persons, or in remainder to, or to the use of a daughter or daughters lawfully begotten, with any remainder or remainders to any other person or persons, that any son or sons, or daughter or daughters of such person or persons lawfully begotten or to be begotten, that shall be born after the decease of his, her or their father, shall and may, by virtue of such settlement, take such estate so limited to the first and other sons, or to the daughter or daughters, in the same manner, as if born in the lifetime of his, her or their father, although there shall happen no estate to be limited to trustees, after the decease of the father, to preserve the contingent remainder to such afterborn son or sons, daughter or daughters, until he, she or they come *in esse*, or are born, to take the same; any law or usage to the contrary in any wise notwithstanding.

II. Provided also, That nothing in this act shall extend or be construed to extend to divest any estate in remainder, that by virtue of any marriage or other settlement, is already come to the possession of any person or persons, or to whom any right is accrued, though not

in actual possession, by reason or means of any afterborn son or sons, or daughter or daughters not happening to be born in the lifetime of his, her or their father.

4 ANNE. CAP. 16. [A.D. 1705.]

*An act for the amendment of the law, and the better advancement of justice.*

For the amendment of the law in several particulars, and for the easier, speedier, and better advancement of justice, be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *Trinity* term, which shall be in the year of our Lord one thousand seven hundred and six, where any demurrer shall be joined, and entered in any action or suit in any court of record within this realm, the judges shall proceed and give judgment, according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, or defect in any writ, return, plaint, declaration, or other pleading, process, or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding that such imperfection, omission, or defect might have heretofore been taken to be matter of substance, and not aided by the statute made in the twenty seventh year of Queen *Elizabeth*, intituled, *An act for the furtherance of justice in case of demurrer and pleadings*, so as sufficient matter appear in the said pleadings, upon which the court may give judgment according to the very right of the cause; and therefore from and after the said first day of *Trinity* term, no advantage or exception shall be taken of or for an immaterial travers; or of or for the default of entring pledges upon any bill or declaration; or of or for the default of alledging the bringing into court any bond, bill, indenture, or other deed whatsoever mentioned in the declaration or other pleading; or of or for the default of alledging of the bringing into court letters testamentary, or letters of administration; or of or for the omission of *Vi et Armis et contra pacem*, or either of them; or of or for the want of averment of *Hoc paratus est verificare*, or, *Hoc paratus est verificare per Recordum*; or of or for not alledging *prout patet per Recordum*, but the court shall give judgment according to the very right of the cause, as aforesaid, without regarding any such

imperfections, omissions, and defects, or any other matter of like nature, except the same shall be specially and particularly set down and shewn for cause of demurrer.

IV. And be it further enacted by the authority aforesaid, That from and after the said first day of *Trinity* term it shall and may be lawful for any defendant or tenant in any action or suit, or for any plaintiff in replevin, in any court of record, with the leave of the same court, to plead as many several matters thereto, as he shall think necessary for his defence.

V. Provided nevertheless, That if any such matter shall upon a demurrer joyned, be judged insufficient, costs shall be given at the discretion of the court; or if a verdict shall be found upon any issue in the said cause for the plaintiff or demandant, costs shall be also given in like manner, unless the judge, who tried the said issue, shall certify, that the said defendant, or tenant, or plaintiff in replevin, had a probable cause to plead such matter which upon the said issue shall be found against him.

IX. And be it further enacted by the authority aforesaid, That from and after the said first day of *Trinity* term, all grants or conveyances thereafter to be made, by fine or otherwise, of any manors or rents, or of the reversion or remainder of any messuages or lands, shall be good and effectual, to all intents and purposes, without any attornment of the tenants of any such manors, or of the land out of which such rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending, as if their attornment had been had and made.

X. Provided nevertheless, That no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conusor or by breach of any condition for non-payment of rent, before notice shall be given to him of such grant by the conusee or grantee.

XIV. And whereas by an act of parliament made in the twenty ninth year of King Charles the Second, intituled, An act for prevention of frauds and perjuries, it is enacted, *That no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of thirty pounds, that is not proved by the oaths of three witnesses, at the least, that were present at the making thereof;* it is hereby declared, That all such witnesses as are and ought to be allowed to be good witnesses upon trials at law, by the laws and customs of this realm, shall be deemed good witnesses to prove any nuncupative will, or any thing relating thereunto.

**XXI.** And be it further enacted by the authority aforesaid, That all warranties which shall be made after the said first day of *Trinity* term, by any tenant for life, of any lands, tenements, or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void and of none effect; and likewise all collateral warranties, which shall be made after the said first day of *Trinity* term, of any lands, tenements, or hereditaments, by any ancestor who has no estate of inheritance in possession in the same, shall be void against his heir.

**XXVII.** And be it enacted by the authority aforesaid, That from and after the said first day of *Trinity* term, actions of account shall and may be brought and maintained against the executors and administrators of every guardian, bailiff, and receiver; and also by one joint tenant, and tenant in common, his executors and administrators, against the other, as bailiff for receiving more than comes to his just share or proportion, and against the executor and administrator of such joint tenant, or tenant in common; and the auditors appointed by the court, where such actions shall be depending, shall be, and are hereby empowered to administer an oath, and examine the parties touching the matters in question, and for their pains and trouble in auditing and taking such account, have such allowance as the court shall adjudge to be reasonable, to be paid by the party on whose side the ballance of the account shall appear to be.

**7 ANNE. CAP. 20. [A.D. 1708.]**

*An act for the publick registering of deeds, conveyances, and wills, and other incumbrances which shall be made of, or that may affect any honors, manors, lands, tenements, or hereditaments, within the county of Middlesex, after the twenty ninth day of September, one thousand seven hundred and nine.*

Whereas by the different and secret ways of conveying lands, tenements, and hereditaments, such as are ill disposed have it in their power to commit frauds, and frequently do so, by means whereof several persons (who through many years industry in their trades and employments, and by great frugality, have been enabled to purchase lands, or to lend monies on land security) have been undone in their purchases and mortgages, by prior and secret conveyances, and fraudulent incumbrances, and not only themselves, but their whole families thereby utterly ruined: for remedy whereof, may it please your most

excellent Majesty (at the humble request of the justices of the peace, gentlemen, and freeholders of the county of *Middlesex*) that it may be enacted, and be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That a memorial of all deeds and conveyances, which from and after the twenty ninth day of *September*, in the year of our Lord one thousand seven hundred and nine, shall be made and executed, and of all wills and devises in writing made or to be made and published, where the devisor or testatrix shall die after the said twenty ninth day of *September*, of or concerning, and whereby any honors, manors, lands, tenements, or hereditaments in the said county, may be any way affected in law or equity, may be registered in such manner as is herein after directed; and that every such deed or conveyance that shall at any time after the said twenty ninth day of *September*, be made and executed, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless such memorial thereof be registered as by this act is directed, before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim; and that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered at such times and in manner as is herein after directed.

XVII. Provided always, and be it further enacted, That this act shall not extend to any copyhold estates, or to any leases at a rack rent, or to any lease not exceeding one and twenty years, where the actual possession and occupation goeth along with the lease, or to any of the chambers in *Serjeants Inn*, the inns of court, or inns of *Chancery*; anything in this act contained to the contrary thereof in any wise notwithstanding.

8 ANNE. CAP. 14. [A.D. 1709.]

*An act for the better security of rents, and to prevent frauds committed by tenants.*

IV. And whereas no action of debt lies against a tenant for life or lives, for any arrears of rent, during the continuance of such estate for life or lives, be it enacted by the authority aforesaid, That from and after the said first day of *May*, it shall and may be lawful for any

person or persons, having any rent in arrear or due upon any lease or demise for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner as they might have done, in case such rent were due and reserved upon a lease for years.

VI. And whereas tenants *pur auter vie* and lessees for years, or at will, frequently hold over the tenements to them demised, after the determination of such leases: and whereas after the determination of such, or any other leases, no distress can by law be made for any arrears of rent that grew due on such respective leases before the determination thereof; it is hereby further enacted by the authority aforesaid, That from and after the said first day of *May*, one thousand seven hundred and ten, it shall and may be lawful, for any person or persons, having any rent in arrear or due upon any lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears, after the determination of the said respective leases, in the same manner as they might have done, if such lease or leases had not been ended or determined.

VII. Provided, That such distress be made within the space of six kalendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.

4 GEO. II. CAP. 28. [A.D. 1731.]

*An act for the more effectual preventing frauds committed by tenants, and for the more easy recovery of rents, and renewal of leases.*

V. And whereas the remedy for recovering rent seek, rents of assize and chief rents, are tedious and difficult, be it therefore enacted by the authority aforesaid, That from and after the twenty fourth day of *June* one thousand seven hundred and thirty one, all and every person or persons, bodies politick and corporate, shall and may have the like remedy by distress, and by impounding and selling the same, in cases of rent seek, rents of assize and chief rents, which have been duly answered or paid for the space of three years, within the space of twenty years before the first day of this present session of parliament, or shall be hereafter created, as in case of rent reserved upon lease; any law or usage to the contrary notwithstanding.

[7 GEO. II. CAP. 20. [A.D. 1734.]

*An act for the more easy redemption and foreclosure of mortgages.]*

## 11 GEO. II. CAP. 19. [A.D. 1738.]

*An act for the mere effectual securing the payment of rents, and preventing frauds by tenants.*

XI. And whereas the possession of estates in lands, tenements, and hereditaments is rendered very precarious by the frequent and fraudulent practice of tenants, in attorning to strangers, who claim title to the estates of their respective landlord or landlords, lessor or lessors, who by that means are turned out of possession of their respective estates, and put to the difficulty and expence of recovering the possession thereof by actions or suits at law; for remedy thereof, be it enacted by the authority aforesaid, That from and after the said twenty fourth day of *June* in the year of our Lord one thousand seven hundred thirty and eight, all and every such attornment, and attornments of any tenant or tenants of any messuages, lands, tenements, or hereditaments, within that part of *Great Britain* called *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be any wise changed, altered, or affected by any such attornment or attornments: Provided always, That nothing herein contained shall extend to vacate or effect any attornment made pursuant to and in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage is become forfeited.

XIV. And to obviate some difficulties that many times occur in the recovery of rents, where the demises are not by deed, be it further enacted by the authority aforesaid, That from and after the said twenty fourth day of *June*, it shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff in such action shall not therefore be nonsuited, but may make use thereof as an evidence of the *Quantum* of the damages to be recovered.

XV. And whereas where any lessor or landlord, having only an estate for life in the lands, tenements, or hereditaments demised, happens to die before or on the day, on which any rent is reserved, or made payable, such rent, or any part thereof, is not by law recoverable by the executors or administrators of such lessor or landlord; nor is the person in reversion entitled thereto, any other than for the use and occupation of such lands, tenements, or hereditaments, from the death of the tenant for life; of which advantage hath been often taken by the under-tenants, who thereby avoid paying anything for the same; for remedy whereof, be it enacted by the authority aforesaid, That from and after the four and twentieth day of *June*, one thousand seven hundred thirty and eight, where any tenant for life shall happen to die before or on the day, on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, that the executors or administrators of such tenant for life shall and may in an action on the case recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole or if before such day then a proportion, of such rent according to the time such tenant for life lived, of the last year, or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances or a proportionable part thereof respectively.\*

14 GEO. II. CAP. 20. [A.D. 1741.]

*An act to amend and explain an act made in the twenty ninth year of the reign of King Charles the Second, intituled An act for prevention of Frauds and Perjuries, so far as the same relates to estates pur auter vie.*

IX. And whereas, by an act made in the twenty ninth year of King Charles the Second, intituled, *An act for prevention of frauds and perjuries*, amongst other things, it is enacted, That estates *pur auter vie*, whereof no devise should be made, should, in case there should be no special occupant thereof, go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and should be assets in their hands: and whereas doubts have arisen, where no devise has been made of such estates, to whom the surplus

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\* See 4 & 5. Wm. IV. c. 22.

of such estates, after the debts of such deceased owners thereof are fully satisfied, shall belong; be it enacted by the authority aforesaid, That such estates *pur autre vie*, in case there be no special occupant thereof, of which no devise shall have been made according to the said act for prevention of frauds and perjuries, or so much thereof as shall not have been so devised, shall go, be applied, and distributed, in the same manner as the personal estate of the testator or intestate.

25 GEO. II. CAP. 6. [A.D. 1752.]

*An act for avoiding and putting an end to certain doubts and questions relating to the attestation of wills and codicils concerning real estates in that part of Great Britain called England, and in his Majesty's colonies and plantations in America.*

Whereas by an act made in the twenty ninth year of the reign of his late majesty King *Charles* the Second, intituled, *An act for prevention of frauds and perjuries*; it is amongst other things enacted, That from and after the twenty fourth day of *June* in the year of our Lord one thousand six hundred and seventy seven, all devises and bequests of any lands or tenements deviseable, either by force of the statute of wills, or by that statute, or by force of the custom of *Kent*, or the custom of any borough, or any other particular custom, shall be in writing, and signed by the party so devising the same, or by some other person in his presence, and by his express direction; and shall be attested and subscribed in the presence of the said devisor, by three or four credible witnesses, or else they shall be utterly void and of none effect, which hath been found to be a wise and good provision: but whereas doubts have arisen who are to be deemed legal witnesses within the intent of the said act; therefore, for avoiding the same, be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That if any person shall attest the execution of any will or codicil which shall be made after the twenty fourth day of *June* in the year of our Lord one thousand seven hundred and fifty two, to whom any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate, other than and except charges on lands, tenements or hereditaments for payment of any debt or debts, shall be thereby given or made, such devise, legacy, estate, interest,

gift or appointment, shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly null and void; and such person shall be admitted as a witness to the execution of such will or codicil, within the intent of the said act; notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will or codicil.

II. And be it further enacted by the authority aforesaid, That in case, by any will or codicil already made or hereafter to be made, any lands, tenements or hereditaments are or shall be charged with any debt or debts; and any creditor whose debt is so charged, hath attested or shall attest the execution of such will or codicil, every such creditor, notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil, within the intent of the said act.

III. And be it further enacted by the authority aforesaid, That if any person hath attested the execution of any will or codicil already made, or shall attest the execution of any will or codicil which shall be made on or before the said twenty fourth day of *June* in the year of our Lord one thousand seven hundred and fifty two, to whom any legacy or bequest is or shall be thereby given, whether charged upon lands, tenements or hereditaments, or not; and such person, before he shall give his testimony concerning the execution of any such will or codicil, shall have been paid, or have accepted or released, or shall have refused to accept such legacy or bequest, upon tender made thereof; such person shall be admitted as a witness to the execution of such will or codicil, within the intent of the said act, notwithstanding such legacy or bequest.

IV. Provided always, and be it further enacted, That in case of such tender and refusal as aforesaid, such person shall in no wise be entitled to such legacy or bequest, but shall be for ever afterwards barred therefrom; and in case of such acceptance as aforesaid, such person shall retain to his own use the legacy or bequest which shall have been so paid, satisfied or accepted, notwithstanding such will or codicil shall afterwards be adjudged or determined to be void for want of due execution, or for any other cause or defect whatsoever.

V. And be it further enacted, That in case any such legatee as aforesaid, who hath attested the execution of any will or codicil already made, or shall attest the execution of any will or codicil which shall be made on or before the said twenty fourth day of *June* in the year of our Lord one thousand seven hundred and fifty two, shall have died in

the life-time of the testator, or before he shall have received or released the legacy or bequest so given to him as aforesaid, and before he shall have refused to receive such legacy or bequest, on tender made thereof, such legatee shall be deemed a legal witness to the execution of such will or codicil, within the intent of the said act, notwithstanding such legacy or bequest.

VI. Provided always, That the credit of every such witness so attesting the execution of any will or codicil, in any of the cases in this act before-mentioned, and all circumstances relating thereto, shall be subject to the consideration and determination of the court, and the jury, before whom any such witness shall be examined, or his testimony or attestation made use of; or of the court of equity, in which the testimony or attestation of any such witness shall be made use of; in like manner, to all intents and purposes, as the credit of witnesses in all other cases ought to be considered of and determined.

VII. And be it further enacted by the authority aforesaid, That no person to whom any beneficial estate, interest, gift or appointment shall be given or made, which is hereby enacted to be null and void as aforesaid, or who shall have refused to receive any such legacy or bequest, on tender made as aforesaid, and who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he shall have been so examined, demand or take possession of or receive any profits or benefit of or from any such estate, interest, gift or appointment so given or made to him, in or by any such will or codicil; or demand, receive or accept from any person or persons whatsoever, any such legacy or bequest, or any satisfaction or compensation for the same, in any manner or under any colour or pretence whatsoever.

VIII. Provided always, and be it enacted by the authority aforesaid, That this act or any thing herein contained shall not extend or be construed to extend to the case of any heir at law, or of any devisee in a prior will or codicil of the same testator, executed and attested according to the said recited act, or any person claiming under them respectively, who has been in quiet possession for the space of two years next preceding the sixth day of *May* in the year of our Lord one thousand seven hundred and fifty one, as to such lands, tenements and hereditaments, whereof he has been in quiet possession as aforesaid; and also that this act or any thing herein contained, shall not extend or be construed to extend, to any will or codicil, the validity or due execution whereof hath been contested in any suit in law or equity

commenced by the heir of such devisor, or the devisee in any such prior will or codicil, for recovering the lands, tenements or hereditaments mentioned to be devised in any will or codicil so contested, or any part thereof, or for obtaining any other judgment or decree relative thereto, on or before the said sixth day of *May* in the year of our Lord one thousand seven hundred and fifty one, and which has been already determined in favour of such heir at law, or devisee in such prior will or codicil, or any person claiming under them respectively, or which is still depending, and has been prosecuted with due diligence; but the validity of every such will or codicil, and the competency of the witnesses thereto, shall be adjudged and determined in the same manner, to all intents and purposes, as if this act had never been made; any thing herein before contained to the contrary thereof in any wise notwithstanding.

IX. Provided always nevertheless, and it is hereby declared, That no possession of any heir at law, or devisee in such prior will or codicil as aforesaid, or of any person claiming under them respectively, which is consistent with, or may be warranted by or under any will or codicil attested according to the true intent and meaning of this act, or where the estate descended or might have descended to such heir at law, till a future or executory devise, by virtue of any will or codicil attested according to this act, should or might take effect, shall be deemed to be a possession within the intent and meaning of the clause herein last before contained.

X. And whereas in some of the *British* colonies or plantations in *America*, the said act of the twenty ninth year of the reign of King *Charles* the Second, has been received for law, or acts of assembly have been made, whereby the attestation and subscription of witnesses to devises of lands, tenements and hereditaments have been required: therefore, to prevent and avoid doubts which may arise in the said colonies or plantations, in relation to the attestation of such devises of lands, tenements and hereditaments; be it enacted by the authority aforesaid, That this act, and every clause, matter and thing therein contained, shall extend to such of the said colonies and plantations, where the said act of the twenty ninth year of the reign of King *Charles* the Second, is by act of assembly made, or by usage received as law, or where by act of assembly or usage, the attestation and subscription of a witness or witnesses are made necessary to devises of lands, tenements or hereditaments; and shall have the same force and effect in the construction of or for the avoiding of doubts upon the said

acts of assembly, and laws of the said colonies and plantations, as the same ought to have in the construction of or for the avoiding of doubts upon the said act of the twenty ninth year of the reign of King *Charles the Second in England.*

XI. Provided always, That as to cases arising in any of the said colonies or plantations in *America*, no such devise, legacy or bequest as aforesaid, shall be made null and void by virtue of this act, unless the will or codicil whereby such devise, legacy or bequest shall be given, shall be made after the first day of *March* which shall be in the year of our Lord one thousand seven hundred and fifty three.

30 GEO. II. CAP. 24, § 1. [A.D. 1757.]

*An act for the more effectual punishment of persons who shall attain, or attempt to attain possession of goods or money by false or untrue pretences;*

Whereas divers evil disposed persons, to support their profligate way of life, have by various subtle stratagems, threats and devises, fraudulently obtained divers sums of money, goods wares and merchandizes, to the great injury of industrious families, and to the manifest prejudice of trade and credit; therefore for the punishing all such offenders, be it enacted by the Kings most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That from and after the twenty-ninth day of *September* one thousand seven hundred and fifty-seven, all persons who knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons, money, goods, wares or merchandizes, with intent to cheat or defraud any person or persons of the same; or shall knowingly send or deliver any letter or writing, with or without a name or names subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or any other infamous punishment, with a view or intent to extort or gain money, goods, wares or merchandizes from the person or persons so threatened to be accused, shall be deemed offenders against law and the publick peace; and the court before whom such offender or offenders shall be tried shall in case he, she or they shall be convicted of any of the said offences, order such offender or offenders to be fined and im-

prisoned, or to be put in the pillory, or publickly whipped, or to be transported, as soon as conveniently may be (according to the laws made for transportation of felons) to some of his Majesty's colonies or plantations in *America*, for the term of seven years, as the court in which any such offender or offenders shall be convicted shall think fit and order.

39 GEO. III. CAP. 85. [A.D. 1798.]

*An act to protect masters against embezzlements by their clerks or servants.\**

Whereas bankers, merchants and others, are, in the course of their dealings and transactions, frequently obliged to entrust their servants, clerks, and persons employed by them in the like capacity, with receiving, paying, negotiating, exchanging, or transferring, money, goods, bonds, bills, notes, banker's drafts, and other valuable effects and securities: and whereas doubts have been entertained whether the embezzling of the same by such servants, clerks and others, so employed by their masters, amounts to felony by the law of England, and it is expedient that such offences should be punished in the same manner in both parts of the United Kingdom; be it enacted and declared by the King's most excellent majesty, by and with the consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any servant or clerk, or any person employed for the purpose in the capacity of a servant or clerk, to any person or persons whomsoever, or to any body corporate or politick, shall, by virtue of such employment, receive or take into his possession any money, goods, bond, bill, note, banker's draft, or other valuable security, or effects, for or in the name or on the account of his master or masters, or employer or employers, for whose use or in whose name or names, or on whose account the same was or were delivered to, or taken into the possession of such servant, clerk, or other person so employed, although such money, goods, bond, bill, note, banker's draft, or other valuable security, was or were no otherwise received into the possession of his or their servant, clerk, or other person so employed; and every such offender, his adviser, procurer, aider, or abettor, being thereof lawfully convicted or attainted, shall be liable to be transported to such parts beyond the seas as his Majesty, by and with the advice of his privy council, shall

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\* 21 Hen. VIII. c. 7; 7 & 8 Geo. IV. c. 29, § 47; and 24 & 25 Vict. c. 96, § 68.

appoint, for any term not exceeding fourteen years, in the discretion of the court before whom such offender shall be convicted or adjudged.

40 GEO. III. CAP. 98. [A.D. 1800.]

(*Thellusson Act.*)

*An act to restrain all trusts and directions in deeds or wills, whereby the profits or produce of real or personal estate shall be accumulated, and the beneficial enjoyment thereof postponed beyond the time therein limited.*

Whereas it is expedient that all dispositions of real or personal estates, whereby the profits and produce thereof are directed to be accumulated, and the beneficial enjoyment thereof is postponed, should be made subject to the restrictions herein-after contained; may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled, and by the authority of the same, That no person or persons shall, after the passing of this act, by any deed or deeds, surrender or surrenders, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property, so and in such manner that the rents, issues, profits, or produce thereof, shall be wholly or partially accumulated for any longer term than the life or lives of any such grantor or grantors, settler or settlers, or the term of twenty-one years from the death of any such grantor, settler, devisor, or testator, or during the minority or respective minorities of any person or persons who shall be living, or in *ventre sa mere* at the time of the death of such grantor, devisor, or testator, or during the minority or respective minorities only of any person or persons who, under the uses or trusts of the deed, surrender, will, or other assurances, directing such accumulations, would, for the time being, if of full age, be entitled unto the rents, issues, and profits, or the interest, dividends, or annual produce, so directed to be accumulated; and in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated, shall, so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed.

II. Provided always, and be it enacted, That nothing in this act contained shall extend to any provision for payment of debts of any grantor, settler, or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settler, or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements, but that all such provisions and directions shall and may be made and given as if this act had not passed.

46 GEO. III. CAP. 37. [A.D. 1806.]

*An act to declare the law with respect to witnesses refusing to answer.*

Whereas doubts have arisen whether a witness can by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to any penalty or forfeiture, but the answering of which may establish, or tend to establish that he owes a debt, or is otherwise subject to a civil suit at the instance of his Majesty, or of some other person or persons; be it therefore declared and enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That a witness cannot by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture, of any nature whatsoever, by reason only, or on the sole ground, that the answering of such question may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit, either at the instance of his Majesty, or of any other person or persons.

9 GEO. IV. CAP. 14. [A.D. 1828.]

(*Lord Tenterden's Act.*)

*An Act for rendering a written Memorandum necessary to the Validity of certain Promises and Engagements.*

Whereas by an Act passed in *England* in the twenty-first year of the reign of King *James* the First, it was, among other things, enacted, that all actions of account and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant,

their factors or servants, all actions of debt grounded upon any lending or contract without speciality, and all actions of debt for arrearages of rent, should be commenced within three years after the end of the then present session of Parliament, or within six years next after the cause of such actions or suit, and not after: And whereas a similar enactment is contained in an Act passed in *Ireland* in the tenth year of the reign of King *Charles* the First: And whereas various questions have arisen in actions founded on simple contract, as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments; and it is expedient to prevent such questions, and to make provision for giving effect to the said enactments and to the intention thereof:

I. Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That in actions of debt or upon the case grounded upon any simple contract no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments or either of them, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby; and that where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor, or administrator shall lose the benefit of the said enactments or either of them, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever: Provided also, that in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by either of the said recited Acts or this Act, as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

II. And be it further enacted, That if any defendant or defendants in any action on any simple contract shall plead any matter in abatement, to the effect that any other person or persons ought to be jointly sued, and issue be joined on such plea, and it shall appear at the trial that the action could not, by reason of the said recited Acts or this Act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the issue joined on such plea shall be found against the party pleading the same.

III. And be it further enacted, That no indorsement or memorandum of any payment written or made after the time appointed for this Act to take effect, upon any promissory note, bill of exchange, or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of either of the said statutes.

IV. And be it further enacted, That the said recited Acts and this Act shall be deemed and taken to apply to the case of any debt on simple contract alleged by way of set off on the part of any defendant, either by plea, notice, or otherwise.

V. And be it further enacted, That no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

VI. And be it further enacted, That no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

VII. And whereas by an Act passed in *England* in the twenty-ninth year of the reign of King *Charles* the Second, intituled *An Act for the Prevention of Frauds and Perjuries*, it is, among other things, enacted, that from and after the twenty-fourth day of *June* one thousand six hundred and seventy-seven, no contract for the sale of any goods, wares, and merchandizes, for the price of ten pounds sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that

some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized: And whereas a similar enactment is contained in an Act passed in *Ireland* in the seventh year of the reign of King *William* the Third: And whereas it has been held, that the said recited enactments do not extend to certain executory contracts for the sale of goods, which nevertheless are within the mischief thereby intended to be remedied; and it is expedient to extend the said enactments to such executory contracts; Be it enacted, That the said enactments shall extend to all contracts for the sale of goods of the value of ten pounds sterling and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

11 GEO. IV. & 1 WM. IV. CAP. 40. [A.D. 1830.]

*An Act for making better Provision for the Disposal of the undisposed of Residues of the Effects of Testators.*

Whereas Testators by their Wills frequently appoint Executors, without making any express Disposition of the Residue of their Personal Estate: And whereas Executors so appointed become by Law entitled to the whole Residue of such Personal Estate; and Courts of Equity have so far followed the Law as to hold such Executors to be entitled to retain such Residue for their own Use, unless it appears to have been their Testator's Intention to exclude them from the beneficial Interest therein, in which Case they are held to be Trustees for the Person or Persons (if any) who would be entitled to such Estate under the Statute of Distributions, if the Testator has died Intestate: And whereas it is desirable that the Law should be extended in that respect; Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That when any Person shall die, after the First Day of *September* next after the passing of this Act, having by his or her Will, or any Codicil or Codicils thereto, appointed any Person or Persons to be his or her Executor or Executors, such Executor or Executors shall be deemed by Courts of Equity to be a Trustee or Trustees for the Person or Persons (if any) who would be

entitled to the Estate under the Statute of Distributions, in respect of any Residue not expressly disposed of, unless it shall appear by the Will, or any Codicil thereto, the Person or Persons so appointed Executor or Executors was or were intended to take such Residue beneficially.

II. Provided also, and be it further enacted, That nothing herein contained shall affect or prejudice any Right to which any Executor, if this Act had not been passed, would have been entitled, in Cases where there is not any Person who would be entitled to the Testator's Estate under the Statute of Distributions, in respect of any Residue not expressly disposed of.

III. Provided always, and be it further enacted, That nothing herein contained shall extend to that Part of the United Kingdom called *Scotland*.

CAP. 46.

*An Act to alter and amend the Law relating to Illusory Appointments.*

Whereas, by Deeds, Wills, and other Instruments, Powers are frequently given to appoint Real and Personal Property amongst several Objects, in such Manner that none of the Objects can be excluded by the Donee of the Power from a Share of such Property; And whereas Appointments in exercise of such Powers whereby an unsubstantial, illusory, or nominal Share of the Property affected thereby is appointed to or left unappointed to devolve upon any one or more of the Objects thereof, are invalid in Equity, although the like Appointments are good and binding at Law: And whereas considerable Inconvenience hath arisen from the Rule of Equity relative to such Appointments, and it is expedient that such Appointments should be as valid in Equity as at Law; Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Appointment which from and after the passing of this Act shall be made in exercise of any Power or Authority to appoint any Property, Real or Personal, amongst several Objects, shall be invalid or impeached in Equity, on the Ground that an unsubstantial, illusory, or nominal Share only shall be thereby appointed to or left unappointed to devolve upon any one or more of the Objects of such Power; but that every such Appointment shall be valid and effectual in Equity as well as at Law, notwithstanding that any one or more of the Objects shall not thereunder, or in default of

such Appointment, take more than an unsubstantial, illusory, or nominal Share of the Property subjected to such Power.

II. Provided always, and be it further enacted, That nothing in this Act contained shall prejudice or affect any Provision in any Deed, Will, or other Instrument creating any such Power as aforesaid, which shall declare the Amount of the Share or Shares from which no Object of the Power shall be excluded.

III. Provided also, and be it further enacted and declared, That nothing in this Act contained shall be construed, deemed, or taken, at Law or in Equity, to give any other Validity, Force, or Effect, to any Appointment, than such Appointment would have had if a substantial Share of the Property affected by the Power had been thereby appointed to or left unappointed to devolve upon any Object of such Power.

[11 GEO. IV. & 1 WM. IV. CAP. 47. [A.D. 1830.]

*An Act for consolidating and Amending the Laws for facilitating the Payment of Debts out of Real Estate.]*

[2 & 3 WM. IV. CAP. 71. [A.D. 1832.]<sup>1</sup>

*An Act for shortening the Time of Prescription in certain Cases.]*

[3 & 4 WM. IV. CAP. 27. [A.D. 1833.]

*An Act for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto.]*

3 & 4 WM. IV. CAP. 42. [A.D. 1833.]

II. And whereas there is no Remedy provided by Law for Injuries to the Real Estate of any Person deceased, committed in his Lifetime, nor for certain Wrongs done by a Person deceased in his Lifetime to another in respect of his Property, Real or Personal; for Remedy thereof be it enacted, That an Action of Trespass, or Trespass on the Case, as the Case may be, may be maintained by the Executors or Administrators of any Person deceased for any Injury to the Real Estate of such Person, committed in his Lifetime, for which an Action might have been maintained by such Person, so as such Injury shall have been committed within Six Calendar Months before the Death of such deceased Person, and provided such Action shall be

brought within One Year after the Death of such Person ; and the Damages, when recovered, shall be Part of the Personal Estate of such Person ; and further, that an Action of Trespass, or Trespass on the Case, as the Case may be, may be maintained against the Executors or Administrators of any Person deceased for any Wrong committed by him in his Lifetime to another in respect of his Property, Real or Personal, so as such Injury shall have been committed within Six Calendar Months before such Person's Death, and so as such Action shall be brought within Six Calendar Months after such Executors or Administrators shall have taken upon themselves the Administration of the Estate and Effects of such Person ; and the Damages to be recovered in such Action shall be payable in like Order of Administration as the Simple Contract Debts of such Person.

XXXI. And be it further enacted, That in every Action brought by any Executor or Administrator in right of the Testator or Intestate, such Executor or Administrator shall, unless the Court in which such Action is brought, or a Judge of any of the said Superior Courts, shall otherwise order, be liable to pay Costs to the Defendant in case of being nonsuited or a Verdict passing against the Plaintiff, and in all other Cases in which he would be liable if such Plaintiff were suing in his own Right upon a Cause of Action accruing to himself ; and the Defendant shall have Judgment for such Costs, and they shall be recovered in like Manner.

XXXVII. And be it further enacted, That it shall be lawful for the Executors or Administrators of any Lessor or Landlord to distrain upon the Lands demised for any Term, or at Will, for the Arrearages of Rent due to such Lessor or Landlord in his Lifetime, in like Manner as such Lessor or Landlord might have done in his Lifetime.

XXXVIII. And be it further enacted, That such Arrearages may be distrained for after the End or Determination of such Term or Lease, at Will, in the same Manner as if such Term or Lease had not been ended or determined : provided that such Distress be made within the Space of Six Calendar Months after the Determination of such Term or Lease, and during the Continuance of the Possession of the Tenant from whom such Arrears became due : Provided also, that all and every the Powers and Provisions in the several Statutes made relating to Distresses for Rent shall be applicable to the Distresses so made as aforesaid.

[3 & 4 WM. IV. CAP. 104. [A.D. 1833.]

*An Act to render Freehold and Copyhold Estates Assets for the Payment of Simple and Contract Debts.]*

[3 & 4 WM. IV. CAP. 106. [A.D. 1833.]

*An Act for the Amendment of the Law of Inheritance.]*

[4 & 5 WM. IV. CAP. 23. [A.D. 1834.]

*An Act for the Amendment of the Law relative to the Escheat and Forfeiture of Real and Personal Property holden in Trust.]*

7 WM. IV. & 1 VICT. CAP. 26. [A.D. 1837.]

*An Act for the Amendment of the Laws with respect to Wills.*

Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Words and Expressions herein-after mentioned, which in their ordinary Signification have a more confined or a different Meaning, shall in this Act, except where the Nature of the Provision or the Context of the Act shall exclude such Construction, be interpreted as follows; (that is to say,) the Word "Will" shall extend to a Testament, and to a Codicil, and to an Appointment by Will or by Writing in the Nature of a Will in exercise of a Power, and also to a Disposition by Will and Testament or Devise of the Custody and Tuition of any Child, by virtue of an Act passed in the Twelfth Year of the Reign of King *Charles* the Second, intituled *An Act for taking away the Court of Wards and Liveries, and Tenures in capite and by Knights Service, and Purveyance, and for settling a Revenue upon His Majesty in lieu thereof*, or by virtue of an Act passed in the Parliament of *Ireland* in the Fourteenth and Fifteenth Years of the Reign of King *Charles* the Second, intituled *An Act for taking away the Court of Wards and Liveries, and Tenures in capite and by Knights Service*, and to any other Testamentary Disposition; and the Words "Real Estate" shall extend to Manors, Advowsons, Messuages, Lands, Tithes, Rents, and Hereditaments, whether Freehold, Customary Freehold, Tenant Right, Customary or Copyhold, or of any other

Tenure, and whether corporeal, incorporeal, or personal, and to any undivided Share thereof, and to any Estate, Right, or Interest (other than a Chattel Interest) therein; and the Words "Personal Estate" shall extend to Leasehold Estates and other Chattels Real, and also to Monies, Shares of Government and other Funds, Securities for Money (not being Real Estates), Debts, Choses in Action, Rights, Credits, Goods, and all other Property whatsoever which by Law devolves upon the Executor or Administrator, and to any Share or Interest therein; and every Word importing the Singular Number only shall extend and be applied to several Persons or Things as well as One Person or Thing; and every Word importing the Masculine Gender only shall extend and be applied to a Female as well as a Male.

II. And be it further enacted, That an Act passed in the Thirty-second Year of the Reign of King *Henry the Eighth*, intituled *The Act of Wills, Wards, and Primer Seisins, whereby a Man may devise Two Parts of his Land*; and also an Act passed in the Thirty-fourth and Thirty-fifth Years of the Reign of the said King *Henry the Eighth*, intituled *The Bill concerning the Explanation of Wills*; and also an Act passed in the Parliament of *Ireland*, in the Tenth Year of the Reign of King *Charles the First*, intituled *An Act how Lands, Tenements, etc. may be disposed by Will or otherwise, and concerning Wards and Primer Seisins*; and also so much of an Act passed in the Twenty-ninth Year of the Reign of King *Charles the Second*, intituled *An Act for Prevention of Frauds and Perjuries*, and of an Act passed in the Parliament of *Ireland* in the Seventh Year of the Reign of King *William the Third*, intituled *An Act for Prevention of Frauds and Perjuries*, as relates to Devises or Bequests of Lands or Tenements, or to the Revocation or Alteration of any Devise in Writing of any Lands, Tenements, or Hereditaments, or any Clause thereof, or to the Devise of any Estate, *pur autre vie*, or to any such Estate being Assets, or to Nuncupative Wills, or to the repeal, altering, or changing of any Will in Writing concerning any Goods or Chattels or Personal Estate, or any Clause, Devise, or Bequest therein; and also so much of an Act passed in the Fourth and Fifth Years of the Reign of Queen *Anne*, intituled *An Act for the Amendment of the Law and the better Advancement of Justice*, and of an Act passed in the Parliament of *Ireland* in the Sixth Year of the Reign of Queen *Anne*, intituled *An Act for the Amendment of the Law, and the better Advancement of Justice*, as relates to Witnesses to Nuncupative Wills; and also so much of an Act passed in the Fourteenth Year of the Reign of King

George the Second, intituled *An Act to amend the Law concerning Common Recoveries, and to explain and amend an Act made in the Twenty-ninth Year of the Reign of King Charles the Second, intituled 'An Act for Prevention of Frauds and Perjuries,'* as relates to Estates *pur autre vie;* and also an Act passed in the Twenty-fifth Year of the Reign of King George the Second, intituled *An Act for avoiding and putting an end to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning Real Estates in that Part of Great Britain called England, and in His Majesty's Colonies and Plantations in America,* except so far as relates to His Majesty's Colonies and Plantations in America; and also an Act passed in the Parliament of Ireland in the same Twenty-fifth Year of the Reign of King George the Second, intituled *An Act for the avoiding and putting an end to certain Doubts and Questions relating to the Attestations of Wills and Codicils concerning Real Estates;* and also an Act passed in the Fifty-fifth Year of the Reign of King George the Third, intituled *An Act to remove certain Difficulties in the Disposition of Copyhold Estates by Will,* shall be and the same are hereby repealed, except so far as the same Acts or any of them respectively relate to any Wills or Estates *pur autre vie* to which this Act does not extend.

III. And be it further enacted, That it shall be lawful for every Person to devise, bequeath, or dispose of, by his Will executed in manner herein-after required, all Real Estate and all Personal Estate which he shall be entitled to, either at Law or in Equity, at the Time of his Death, and which if not so devised, bequeathed, or disposed of would devolve upon the Heir at Law, or Customary Heir of him, or, if he became entitled by Descent, of his Ancestor, or upon his Executor or Administrator; and that the Power hereby given shall extend to all Real Estate of the Nature of Customary Freehold or Tenant Right, or Customary or Copyhold, notwithstanding that the Testator may not have surrendered the same to the Use of his Will, or notwithstanding that, being entitled as Heir, Devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the Want of a Custom to devise or surrender to the Use of a Will or otherwise, could not at Law have been disposed of by Will if this Act had not been made, or notwithstanding that the same, in consequence of there being a Custom that a Will or a Surrender to the Use of a Will should continue in force for a limited Time only, or any other special Custom, could not have been disposed of by Will according to the Power contained in this Act, if

this Act had not been made ; and also to Estates *pur autre vie*, whether there shall or shall not be any special Occupant thereof, and whether the same shall be Freehold, Customary Freehold, Tenant Right, Customary or Copyhold, or of any other Tenure, and whether the same shall be a corporeal or an incorporeal Hereditament ; and also to all contingent, executory, or other future Interests in any Real or Personal Estate, whether the Testator may or may not be ascertained as the Person or one of the Persons in whom the same respectively may become vested, and whether he may be entitled thereto under the Instrument by which the same respectively were created or under any Disposition thereof by Deed or Will ; and also to all Rights of Entry for Conditions broken, and other Rights of Entry ; and also to such of the same Estates, Interests, and Rights respectively, and other Real and Personal Estate, as the Testator may be entitled to at the Time of his Death, notwithstanding that he may become entitled to the same subsequently to the Execution of his Will.

IV. Provided always, and be it further enacted, That where any Real Estate of the Nature of Customary Freehold or Tenant Right, or Customary or Copyhold, might, by the Custom of the Manor of which the same is holden, have been surrendered to the Use of a Will, and the Testator shall not have surrendered the same to the Use of his Will, no Person entitled or claiming to be entitled thereto by virtue of such Will shall be entitled to be admitted, except upon Payment of all such Stamp Duties, Fees, and Sums of Money as would have been lawfully due and payable in respect of the surrendering of such Real Estate to the Use of the Will, or in respect of presenting, registering, or enrolling such Surrender, if the same Real Estate had been surrendered to the Use of the Will of such Testator : Provided also, that where the Testator was entitled to have been admitted to such Real Estate, and might, if he had been admitted thereto, have surrendered the same to the Use of his Will, and shall not have been admitted thereto, no Person entitled or claiming to be entitled to such Real Estate in consequence of such Will shall be entitled to be admitted to the same Real Estate by virtue thereof, except on Payment of all such Stamp Duties, Fees, Fine, and Sums of Money as would have been lawfully due and payable in respect of the Admittance of such Testator to such Real Estate, and also of all such Stamp Duties, Fees, and Sums of Money as would have been lawfully due and payable in respect of surrendering such Real Estate to the Use of the Will, or of presenting, registering, or enrolling such Surrender, had the Testator

been duly admitted to such Real Estate, and afterwards surrendered the same to the Use of his Will; all which Stamp Duties, Fees, Fine, or Sums of Money due as aforesaid shall be paid in addition to the Stamp Duties, Fees, Fine, or Sums of Money due or payable on the Admittance of such Person so entitled or claiming to be entitled to the same Real Estate as aforesaid.

V. And be it further enacted, That when any Real Estate of the Nature of Customary Freehold or Tenant Right, or Customary or Copyhold, shall be disposed of by Will, the Lord of the Manor or reputed Manor of which such Real Estate is holden, or his Steward, or the Deputy of such Steward, shall cause the Will by which such Disposition shall be made, or so much thereof as shall contain the Disposition of such Real Estate, to be entered on the Court Rolls of such Manor or reputed Manor; and when any Trusts are declared by the Will of such Real Estate, it shall not be necessary to enter the Declaration of such Trusts, but it shall be sufficient to state in the Entry on the Court Rolls that such Real Estate is subject to the Trusts declared by such Will; and when any such Real Estate could not have been disposed of by Will if this Act had not been made, the same Fine, Heriot, Dues, Duties, and Services shall be paid and rendered by the Devisee as would have been due from the Customary Heir in case of the Descent of the same Real Estate, and the Lord shall as against the Devisee of such Estate have the same Remedy for recovering and enforcing such Fine, Heriot, Dues, Duties, and Services as he is now entitled to for recovering and enforcing the same from or against the Customary Heir in case of a Descent.

VI. And be it further enacted, That if no Disposition by Will shall be made of any Estate *pur autre vie* of a Freehold Nature, the same shall be chargeable in the Hands of the Heir, if it shall come to him by reason of special Occupancy, as Assets by Descent, as in the Case of Freehold Land in Fee Simple; and in case there shall be no special Occupant of any Estate *pur autre vie*, whether Freehold or Customary Freehold, Tenant Right, Customary or Copyhold, or of any other Tenure, and whether a corporeal or incorporeal Hereditament, it shall go to the Executor or Administrator of the Party that had the Estate thereof by virtue of the Grant; and if the same shall come to the Executor or Administrator either by reason of a special Occupancy or by virtue of this Act, it shall be Assets in his Hands, and shall go and be applied and distributed in the same Manner as the Personal Estate of the Testator or Intestate.

VII. And be it further enacted, That no Will made by any Person under the Age of Twenty-one Years shall be valid.

VIII. Provided also, and be it further enacted, That no Will made by any Married Woman shall be valid, except such a Will as might have been made by a Married Woman before the passing of this Act.

IX. And be it further enacted, That no Will shall be valid unless it shall be in Writing and executed in manner herein-after mentioned ; (that is to say,) it shall be signed at the Foot or End thereof by the Testator, or by some other Person in his Presence and by his Direction ; and such Signature shall be made or acknowledged by the Testator in the Presence of Two or more Witnesses present at the same Time, and such Witnesses shall attest and shall subscribe the Will in the Presence of the Testator, but no Form of Attestation shall be necessary.

X. And be it further enacted, That no Appointment made by Will, in exercise of any Power, shall be valid, unless the same be executed in manner herein-before required ; and every Will executed in manner herein-before required shall, so far as respects the Execution and Attestation thereof, be a valid Execution of a Power of Appointment by Will, notwithstanding it shall have been expressly required that a Will made in exercise of such Power should be executed with some additional or other Form of Execution or Solemnity.

XI. Provided always, and be it further enacted, That any Soldier being in actual Military Service, or any Mariner or Seaman being at Sea, may dispose of his Personal Estate as he might have done before the making of this Act.

XII. And be it further enacted, That this Act shall not prejudice or affect any of the Provisions contained in an Act passed in the Eleventh Year of the Reign of His Majesty King *George* the Fourth and the First Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy*, respecting the Wills of Petty Officers and Seamen in the Royal Navy, and Non-commissioned Officers of Marines, and Marines, so far as relates to their Wages, Pay, Prize Money, Bounty Money, and Allowances, or other Monies payable in respect of Services in Her Majesty's Navy.

XIII. And be it further enacted, That every Will executed in manner herein-before required shall be valid without any other Publication thereof.

XIV. And be it further enacted, That if any Person who shall

attest the Execution of a Will shall at the Time of the Execution thereof or at any Time afterwards be incompetent to be admitted a Witness to prove the Execution thereof, such Will shall not on that Account be invalid.

XV. And be it further enacted, That if any Person shall attest the Execution of any Will to whom or to whose Wife or Husband any beneficial Devise, Legacy, Estate, Interest, Gift, or Appointment, of or affecting any Real or Personal Estate (other than and except Charges and Directions for the Payment of any Debt or Debts), shall be thereby given or made, such Devise, Legacy, Estate, Interest, Gift, or Appointment shall, so far only as concerns such Person attesting the Execution of such Will, or the Wife or Husband of such Person, or any Person claiming under such Person or Wife or Husband, be utterly null and void, and such Person so attesting shall be admitted as a Witness to prove the Execution of such Will, or to prove the Validity or Invalidity thereof, notwithstanding such Devise, Legacy, Estate, Interest, Gift, or Appointment mentioned in such Will.

XVI. And be it further enacted, That in case by any Will any Real or Personal Estate shall be charged with any Debt or Debts, and any Creditor, or the Wife or Husband of any Creditor, whose Debt is so charged, shall attest the Execution of such Will, such Creditor notwithstanding such Charge shall be admitted a Witness to prove the Execution of such Will, or to prove the Validity or Invalidity thereof.

XVII. And be it further enacted, That no Person shall, on account of his being an Executor of a Will, be incompetent to be admitted a Witness to prove the Execution of such Will, or a Witness to prove the Validity or Invalidity thereof.

XVIII. And be it further enacted, That every Will made by a Man or Woman shall be revoked by his or her Marriage (except a Will made in exercise of a Power of Appointment, when the Real or Personal Estate thereby appointed would not in default of such Appointment pass to his or her Heir, Customary Heir, Executor, or Administrator, or the Person entitled as his or her next of Kin, under the Statute of Distributions).

XIX. And be it further enacted, That no Will shall be revoked by any Presumption of an Intention on the Ground of an Alteration in Circumstances.

XX. And be it further enacted, That no Will or Codicil, or any Part thereof, shall be revoked otherwise than as aforesaid, or by another Will or Codicil executed in manner herein-before required, or by some

Writing declaring an Intention to revoke the same, and executed in the Manner in which a Will is herein-before required to be executed, or by the burning, tearing, or otherwise destroying the same by the Testator, or by some Person in his Presence and by his Direction, with the Intention of revoking the same.

**XXI.** And be it further enacted, That no Obliteration, Interlineation, or other Alteration made in any Will after the Execution thereof shall be valid or have any Effect, except so far as the Words or Effect of the Will before such Alteration shall not be apparent, unless such Alteration shall be executed in like Manner as herein-before is required for the Execution of the Will; but the Will, with such Alteration as Part thereof, shall be deemed to be duly executed if the Signature of the Testator and the Subscription of the Witnesses be made in the Margin or on some other Part of the Will opposite or near to such Alteration, or at the Foot or End of or opposite to a Memorandum referring to such Alteration, and written at the End or some other Part of the Will.

**XXII.** And be it further enacted, That no Will or Codicil, or any Part thereof, which shall be in any Manner revoked, shall be revived otherwise than by the Re-execution thereof, or by a Codicil executed in manner herein-before required, and showing an Intention to revive the same; and when any Will or Codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such Revival shall not extend to so much thereof as shall have been revoked before the Revocation of the whole thereof, unless an Intention to the contrary shall be shown.

**XXIII.** And be it further enacted, That no Conveyance or other Act made or done subsequently to the Execution of a Will of or relating to any Real or Personal Estate therein comprised, except an Act by which such Will shall be revoked as aforesaid, shall prevent the Operation of the Will with respect to such Estate or Interest in such Real or Personal Estate as the Testator shall have Power to dispose of by Will at the Time of his Death.

**XXIV.** And be it further enacted, That every Will shall be construed, with reference to the Real Estate and Personal Estate comprised in it, to speak and take effect as if it had been executed immediately before the Death of the Testator, unless a contrary Intention shall appear by the Will.

**XXV.** And be it further enacted, That, unless a contrary Intention shall appear by the Will, such Real Estate or Interest therein as

shall be comprised or intended to be comprised in any Devise in such Will contained, which shall fail or be void by reason of the Death of the Devisee in the Lifetime of the Testator, or by reason of such Devise being contrary to Law, or otherwise incapable of taking effect, shall be included in the Residuary Devise (if any) contained in such Will.

XXVI. And be it further enacted, That a Devise of the Land of the Testator, or of the Land of the Testator in any Place or in the Occupation of any Person mentioned in his Will, or otherwise described in a general Manner, and any other general Devise which would describe a Customary, Copyhold, or Leasehold Estate if the Testator had no Freehold Estate which could be described by it, shall be construed to include the Customary, Copyhold, and Leasehold Estates of the Testator, or his Customary, Copyhold, and Leasehold Estates, or any of them, to which such Description shall extend, as the Case may be, as well as Freehold Estates, unless a contrary Intention shall appear by the Will.

XXVII. And be it further enacted, That a general Devise of the Real Estate of the Testator, or of the Real Estate of the Testator in any Place or in the Occupation of any Person mentioned in his Will, or otherwise described in a general Manner, shall be construed to include any Real Estate, or any Real Estate to which such Description shall extend (as the Case may be), which he may have Power to appoint in any Manner he may think proper, and shall operate as an Execution of such Power, unless a contrary Intention shall appear by the Will; and in like Manner a Bequest of the Personal Estate of the Testator, or any Bequest of Personal Property described in a general Manner, shall be construed to include any Personal Estate, or any Personal Estate to which such Description shall extend (as the Case may be), which he may have Power to appoint in any Manner he may think proper, and shall operate as an Execution of such Power, unless a contrary Intention shall appear by the Will.

XXVIII. And be it further enacted, That where any Real Estate shall be devised to any Person without any Words of Limitation, such Devise shall be construed to pass the Fee Simple, or other the whole Estate or Interest which the Testator had Power to dispose of by Will in such Real Estate, unless a contrary Intention shall appear by the Will.

XXIX. And be it further enacted, That in any Devise or Bequest of Real or Personal Estate the Words "die without Issue," or "die

without leaving Issue," or "have no Issue," or any other Words which may import either a Want or Failure of Issue of any Person in his Lifetime or at the Time of his Death, or an indefinite Failure of his Issue, shall be construed to mean a Want or Failure of Issue in the Lifetime or at the Time of the Death of such Person, and not an indefinite Failure of his Issue, unless a contrary Intention shall appear by the Will, by reason of such Person having a prior Estate Tail, or of a preceding Gift, being, without any Implication arising from such Words, a Limitation of an Estate Tail to such Person or Issue or otherwise: Provided, that this Act shall not extend to Cases where such Words as aforesaid import if no Issue described in a preceding Gift shall be born, or if there shall be no Issue who shall live to attain the Age or otherwise answer the Description required for obtaining a vested Estate by a preceding Gift to such Issue.

XXX. And be it further enacted, That where any Real Estate (other than or not being a Presentation to a Church) shall be devised to any Trustee or Executor, such Devise shall be construed to pass the Fee Simple or other the whole Estate or Interest which the Testator had Power to dispose of by Will in such Real Estate, unless a definite Term of Years, absolute or determinable, or an Estate of Freehold, shall thereby be given to him expressly or by Implication.

XXXI. And be it further enacted, That where any Real Estate shall be devised to a Trustee, without any express Limitation of the Estate to be taken by such Trustee, and the beneficial Interest in such Real Estate, or in the surplus Rents and Profits thereof, shall not be given to any Person for Life, or such beneficial Interest shall be given to any Person for Life, but the Purposes of the Trust may continue beyond the Life of such Person, such Devise shall be construed to vest in such Trustee the Fee Simple, or other the whole legal Estate which the Testator had Power to dispose of by Will in such Real Estate, and not an Estate determinable when the Purposes of the Trust shall be satisfied.

XXXII. And be it further enacted, That where any Person to whom any Real Estate shall be devised for an Estate Tail or an Estate in quasi Entail shall die in the Lifetime of the Testator leaving Issue who would be inheritable under such Entail, and any such Issue shall be living at the Time of the Death of the Testator, such Devise shall not lapse, but shall take effect as if the Death of such Person had happened immediately after the Death of the Testator, unless a contrary Intention shall appear by the Will.

**XXXIII.** And be it further enacted, That where any Person being a Child or other Issue of the Testator to whom any Real or Personal Estate shall be devised or bequeathed for any Estate or Interest not determinable at or before the Death of such Person shall die in the Lifetime of the Testator leaving Issue, and any such Issue of such Person shall be living at the Time of the Death of the Testator, such Devise or Bequest shall not lapse, but shall take effect as if the Death of such Person had happened immediately after the Death of the Testator, unless a contrary Intention shall appear by the Will.

**XXXIV.** And be it further enacted, That this Act shall not extend to any Will made before the First Day of *January* One thousand eight hundred and thirty-eight, and that every Will re-executed or republished, or revived by any Codicil, shall for the Purposes of this Act be deemed to have been made at the Time at which the same shall be so re-executed, republished, or revived; and that this Act shall not extend to any Estate *pur autre vie* of any Person who shall die before the First Day of *January* One thousand eight hundred and thirty-eight.

[1 & 2 VICT. CAP. 110. §§ 11, 13, 18, 19. [A.D. 1838.]

*An Act for extending the Remedy of Creditors against the Property of Debtors.]*

[7 & 8 VICT. CAP. 76. [A.D. 1844.]

*An Act to simplify the Transfer of Property.]*

[8 & 9 VICT. CAP. 106. [A.D. 1845.]

*An Act to amend the Law of Real Property.]*

6 & 7 VICT. CAP. 85. [A.D. 1843.]

*An Act for improving the Law of Evidence.*

Whereas the Inquiry after Truth in Courts of Justice is often obstructed by Incapacities created by the present Law, and it is desirable that full Information as to the Facts in Issue, both in Criminal and in Civil Cases, should be laid before the Persons who are appointed to decide upon them, and that such Persons should exercise their Judgment on the Credit of the Witnesses adduced and on the Truth of their Testimony: Now therefore be it enacted by the Queen's most Excel-

lent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Person offered as a Witness shall hereafter be excluded by reason of Incapacity from Crime or Interest from giving Evidence, either in Person or by Deposition, according to the Practice of the Court, on the Trial of any Issue joined, or of any Matter or Question or on any Inquiry arising in any Suit, Action, or Proceeding, Civil or Criminal, in any Court, or before any Judge, Jury, Sheriff, Coroner, Magistrate, Officer, or Person having, by Law or by Consent of Parties, Authority to hear, receive, and examine Evidence; but that every Person so offered may and shall be admitted to give Evidence on Oath, or solemn Affirmation in those Cases wherein Affirmation is by Law receivable, notwithstanding that such Person may or shall have an Interest in the Matter in question, or in the Event of the Trial of any Issue, Matter, Question, or Injury, or of the Suit, Action, or Proceeding in which he is offered as a Witness, and notwithstanding that such Person offered as a Witness may have been previously convicted of any Crime or Offence: Provided that this Act shall not render competent any Party to any Suit, Action, or Proceeding individually named in the Record, or any Lessor of the Plaintiff, or Tenant of Premises sought to be recovered in Ejectment, or the Landlord or other Person in whose Right any Defendant in Replevin may make Cognizance, or any Person in whose immediate and individual Behalf any Action may be brought or defended, either wholly or in part, or the Husband or Wife of such Persons respectively; provided also, that this Act shall not repeal any Provision in a certain Act passed in the Session of Parliament holden in the Seventh Year of the Reign of His late Majesty and in the First Year of the Reign of Her present Majesty, intituled *An Act for the Amendment of the Laws with respect to Wills*: Provided that in Courts of Equity any Defendant to any Cause pending in any such Court may be examined as a Witness on the Behalf of the Plaintiff or of any Co-defendant in any such Cause, saving just Exceptions; and that any Interest which such Defendant so to be examined may have in the Matters or any of the Matters in question in the Cause shall not be deemed a just Exception to the Testimony of such Defendant, but shall only be considered as affecting or tending to affect the Credit of such Defendant as a Witness.

## CAP. 96.

(*Lord Campbell's Libel Act.*)

*An Act to amend the Law respecting defamatory Words and Libel.*

For the better Protection of private Character, and for more effectually securing the Liberty of the Press, and for better preventing Abuses in exercising the said Liberty, be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in any Action for Defamation it shall be lawful for the Defendant (after Notice in Writing of his Intention so to do, duly given to the Plaintiff at the Time of filing or delivering the Plea in such Action,) to give in Evidence, in mitigation of Damages, that he made or offered an Apology to the Plaintiff for such Defamation before the Commencement of the Action, or as soon afterwards as he had an Opportunity of doing so, in case the Action shall have been commenced before there was an Opportunity of making or offering such Apology.

II. And be it enacted, That in an Action for a Libel contained in any public Newspaper or other periodical Publication it shall be competent to the Defendant to plead that such Libel was inserted in such Newspaper or other periodical Publication without actual Malice, and without gross Negligence, and that before the Commencement of the Action, or at the earliest Opportunity afterwards, he inserted in such Newspaper or other periodical Publication a full Apology for the said Libel, or, if the Newspaper or periodical Publication in which the said Libel appeared should be ordinarily published at Intervals exceeding One Week, had offered to publish the said Apology in any Newspaper or periodical Publication to be selected by the Plaintiff in such Action ; and that every such Defendant shall upon filing such Plea be at liberty to pay into Court a Sum of Money by way of Amends for the Injury sustained by the Publication of such Libel, and such Payment into Court shall be of the same Effect, and be available in the same Manner and to the same Extent, and be subject to the same Rules and Regulations as to Payment of Costs and the Form of Pleading, except so far as regards the pleading of the additional Facts herein-before required to be pleaded by such Defendant, as if Actions for Libel had not been excepted from the personal Actions in which it is lawful to pay Money into Court under an Act passed in the Session of Parliament held in the Fourth Year of His late Majesty, intituled *An Act for*

*the further Amendment of the Law, and the better Advancement of Justice ; and that to such Plea to such Action it shall be competent to the Plaintiff to reply generally, denying the whole of such Plea.*

9 & 10 VICT. CAP. 93. [A.D. 1846.]

(*Lord Campbell's Act.*)

*An Act for compensating the Families of Persons killed by Accidents.*

Whereas no Action at Law is now maintainable against a Person who by his wrongful Act, Neglect, or Default may have caused the Death of another Person, and it is oftentimes right and expedient that the Wrongdoer in such Case should be answerable in Damages for the Injury so caused by him : Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That whosoever the Death of a Person shall be caused by wrongful Act, Neglect, or Default, and the Act, Neglect, or Default is such as would (if Death had not ensued) have entitled the Party injured to maintain an Action and recover Damages in respect thereof, then and in every such Case the Person who would have been liable if Death hath not ensued shall be liable to an Action for Damages, notwithstanding the Death of the Person injured, and although the Death shall have been caused under such Circumstances as amount in Law to Felony.

II. And be it enacted, That every such Action shall be for the Benefit of the Wife, Husband, Parent, and Child of the Person whose Death shall have been so caused, and shall be brought by and in the Name of the Executor or Administrator of the Person deceased ; and in every such Action the Jury may give such Damages as they may think proportioned to the Injury resulting from such Death to the Parties respectively for whom and for whose Benefit such Action shall be brought : and the Amount so recovered, after deducting the Costs not recovered from the Defendant, shall be divided amongst the before-mentioned Parties in such Shares as the Jury by their Verdict shall find and direct.

III. Provided always, and be it enacted, That not more than One Action shall lie for and in respect of the same Subject Matter of Complaint, and that every such Action shall be commenced within Twelve Calendar Months after the Death of such deceased Person.

## 14 &amp; 15 VICT. CAP. 99. [A.D. 1851.]

*An Act to amend the Law of Evidence.*

Whereas it is expedient to amend the Law of Evidence in divers Particulars: Be it therefore enacted . . . as follows:

II. On the Trial of any Issue joined, or of any Matter of Question, or on any Inquiry arising in any Suit, Action, or other Proceeding in any Court of Justice, or before any Person having by Law, or by Consent of Parties, Authority to hear, receive, and examine Evidence, the Parties thereto, and the Persons in whose Behalf any such Suit, Action, or other Proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and compellable to give Evidence, either *viva voce* or by Deposition, according to the Practice of the Court, on behalf of either or any of the Parties to the said Suit, Action, or other Proceeding.

III. But nothing herein contained shall render any Person who in any criminal Proceeding is charged with the Commission of any Indictable Offence, or any Offence punishable on Summary Conviction, competent or compellable to give Evidence for or against himself or herself, or shall render any Person compellable to answer any Question tending to criminate himself or herself, or shall in any criminal Proceeding render any Husband competent or compellable to give Evidence for or against his Wife, or any Wife competent or compellable to give Evidence for or against her Husband.

IV. Nothing herein contained shall apply to any Action, Suit, Proceeding, or Bill in any Court of Common Law, or in any Ecclesiastical Court, or in either House of Parliament, instituted in consequence of Adultery, or to any Action for Breach of Promise of Marriage.

## 15 &amp; 16 VICT. CAP. 24. [A.D. 1852.]

(Amending 1. Vict. Cap. 26.)

Whereas the Laws with respect to the Execution of Wills require further Amendment: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same (as follows):

I. Where by an Act passed in the First Year of the Reign of Her

Majesty Queen *Victoria*, intituled *An Act for the Amendment of the Laws with respect to Wills*, it is enacted, that no Will shall be valid unless it shall be signed at the Foot or End thereof by the Testator, or by some other Person in his Presence, and by his Direction: Every Will shall, so far only as regards the Position of the Signature of the Testator, or of the Person signing for him as aforesaid, be deemed to be valid within the said Enactment, as explained by this Act, if the Signature shall be so placed at or after, or following, or under, or beside, or opposite to the End of the Will, that it shall be apparent on the Face of the Will that the Testator intended to give Effect by such his Signature to the Writing signed as his Will, and that no such Will shall be affected by the Circumstance that the Signature shall not follow or be immediately after the Foot or End of the Will, or by the Circumstance that a blank Space shall intervene between the concluding Word of the Will and the Signature, or by the Circumstance that the Signature shall be placed among the Words of the Testimonium Clause or of the Clause of Attestation, or shall follow or be after or under the Clause of Attestation, either with or without a blank Space intervening, or shall follow or be after, or under, or beside the Names or One of the Names of the subscribing Witnesses, or by the Circumstance that the Signature shall be on a Side or Page or other Portion of the Paper or Papers containing the Will whereon no Clause or Paragraph or disposing Part of the Will shall be written above the Signature, or by the Circumstance that there shall appear to be sufficient Space on or at the Bottom of the preceding Side or Page or other Portion of the same Paper on which the Will is written to contain the Signature; and the Enumeration of the above Circumstances shall not restrict the Generality of the above Enactment; but no Signature under the said Act or this Act shall be operative to give Effect to any Disposition or Direction which is underneath or which follows it, nor shall it give Effect to any Disposition or Direction inserted after the Signature shall be made.

II. The Provisions of this Act shall extend and be applied to every Will already made, where Administration or Probate has not already been granted or ordered by a Court of competent Jurisdiction in consequence of the defective Execution of such Will, or where the Property, not being within the Jurisdiction of the Ecclesiastical Courts, has not been possessed or enjoyed by some Person or Persons claiming to be entitled thereto in consequence of the defective Execution of such Will, or the Right thereto shall not have been decided to be in some

other Person or Persons than the Persons claiming under the Will, by a Court of competent Jurisdiction, in consequence of the defective Execution of such Will.

III. The Word "Will" shall in the Construction of this Act be interpreted in like Manner as the same is directed to be interpreted under the Provisions in this Behalf contained in the said Act of the First Year of the Reign of Her Majesty Queen *Victoria*.

IV. This Act may be cited as "The Wills Act Amendment Act 1852."

#### CAP. 76.

*An Act to amend the Process, Practice, and Mode of Pleading &c. in the Superior Courts of Common Law at Westminster.*

L. Either Party may object by Demurrer to the Pleading of the opposite Party, on the Ground that such Pleading does not set forth sufficient Ground of Action, Defence, or Reply, as the Case may be; and where Issue is joined on such Demurrer, the Court shall proceed and give Judgment according as the very Right of the Cause and Matter in Law shall appear unto them, without regarding any Imperfection, Omission, Defect in or Lack of Form; and no Judgment shall be arrested, stayed, or reversed for any such Imperfection, Omission, Defect in or Lack of Form.

LI. No Pleading shall be deemed insufficient for any Defect which could heretofore only be objected to by Special Demurrer.

LII. If any Pleading be so framed as to prejudice, embarrass, or delay the fair Trial of the Action, the opposite Party may apply to the Court or a Judge to strike out or amend such Pleading, and the Court or Judge shall make such Order respecting the same, and also respecting the Costs of the Application, as such Court or Judge shall see fit.

#### 17 & 18 VICT. CAP. 113. [A.D. 1854.]

*An Act to amend the Law relating to the Administration of the Estates of deceased Persons.*

'Whereas it is expedient that the Law whereunder the Real and Personal Assets of deceased Persons are administered should be amended:' Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. When any Person shall, after the Thirty-first of December One

thousand eight hundred and fifty-four, die seised of or entitled to any Estate or Interest in any Land or other Hereditaments which shall at the Time of his Death be charged with the Payment of any Sum or Sums of Money by way of Mortgage, and such Person shall not, by his Will or Deed or other Document, have signified any contrary or other Intention, the Heir or Devisee to whom such Land or Hereditaments shall descend or be devised shall not be entitled to have the Mortgage Debt discharged or satisfied out of the Personal Estate or any other Real Estate of such Person, but the Land or Hereditaments so charged shall, as between the different Persons claiming through or under the deceased Person, be primarily liable to the Payment of all Mortgage Debts with which the same shall be charged, every Part thereof, according to its Value, bearing a proportionate Part of the Mortgage Debts charged on the whole thereof: Provided always, that nothing herein contained shall affect or diminish any Right of the Mortgagee on such Lands or Hereditaments to obtain full Payment or Satisfaction of his Mortgage Debt either out of the Personal Estate of the Person so dying as aforesaid or otherwise: Provided also, that nothing herein contained shall affect the Rights of any Person claiming under or by virtue of any Will, Deed, or Document already made or to be made before the First Day of January One thousand eight hundred and fifty-five.

## CAP. 125.

*An Act to amend the Law of Procedure.*

XXVII. Comparison of a disputed Writing with any Writing proved to the Satisfaction of the Judge to be genuine shall be permitted to be made by Witnesses; and such Writings, and the Evidence of Witnesses respecting the same, may be submitted to the Court and Jury as Evidence of the Genuineness, or otherwise, of the Writing in dispute.

[22 & 23 VICT. CAP. 35. [A.D. 1859.]

*An Act to further amend the Law of Property, and to relieve Trustees.]*

23 & 24 VICT. CAP. 38. [A.D. 1860.]

*An Act to further amend the Law of Property.*

VI. Where any actual Waiver of the Benefit of any Covenant or Condition in any Lease on the Part of any Lessor, or his Heirs, Ex-

ecutors, Administrators, or Assigns, shall be proved to have taken place after the passing of this Act in any one particular Instance, such actual Waiver shall not be assumed or deemed to extend to any Instance or any Breach of Covenant or Condition other than that to which such Waiver shall specially relate, nor to be a general Waiver of the Benefit of any such Covenant or Condition, unless an Intention to that Effect shall appear.

VII. Where by any Instrument any Hereditaments have been or shall be limited to Uses, all Uses thereunder, whether expressed or implied by Law, and whether immediate or future, or contingent or executory, or to be declared under any Power therein contained, shall take effect when and as they arise by force of and by relation to the Estate and Seisin originally vested in the Person seised to the Uses, and the continued Existence in him or elsewhere of any Seisin to Uses or Scintilla juris shall not be deemed necessary for the Support of or to give Effect to future or contingent or executory Uses, nor shall any such Seisin to Uses or Scintilla juris be deemed to be suspended, or to remain or to subsist in him or elsewhere.\*

[27 & 28 VICT. CAP. 112. §§ 1, 4. [A.D. 1864.]

*An Act to amend the Law relating to future Judgments, Statutes, and Recognizances.]*

28 & 29 VICT. CAP. 86. [A.D. 1865.]

(*Chief Justice Bovill's Act.*)

*An Act to amend the Law of Partnership.*

Whereas it is expedient to amend the Law relating to Partnership: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. The Advance of Money by Way of Loan to a Person engaged or about to engage in any Trade or Undertaking upon a Contract in Writing with such Person that the Lender shall receive a Rate of Interest varying with the Profits, or shall receive a Share of the Profits arising from carrying on such Trade or Undertaking, shall not,

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\* See the Act generally on Judgments.

of itself, constitute the Lender a Partner with the Person or the Persons carrying on such Trade or Undertaking, or render him responsible as such.

II. No Contract for the Remuneration of a Servant or Agent of any Person engaged in any Trade or Undertaking by a Share of the Profits of such Trade or Undertaking shall, of itself, render such Servant or Agent responsible as a Partner therein, nor give him the Rights of a Partner.

III. No Person being the Widow or Child of the deceased Partner of a Trader, and receiving by way of Annuity a Portion of the Profits made by such Trader in his Business, shall, by reason only of such Receipt, be deemed to be a Partner of or to be subject to any Liabilities incurred by such Trader.

IV. No Person receiving by way of Annuity or otherwise a Portion of the Profits of any Business, in consideration of the Sale by him of the Goodwill of such Business, shall, by reason only of such Receipt, be deemed to be a Partner of or be subject to the Liabilities of the Person carrying on such Business.

V. In the event of any such Trader as aforesaid being adjudged a Bankrupt, or taking the Benefit of any Act for the Relief of Insolvent Debtors, or entering into an Arrangement to pay his Creditors less than Twenty Shillings in the Pound, or dying in insolvent Circumstances, the Lender of any such Loan as aforesaid shall not be entitled to recover any Portion of his Principal, or of the Profits or Interest payable in respect of such Loan, nor shall any such Vendor of a Goodwill as aforesaid be entitled to recover any such Profits as aforesaid until the Claims of the other Creditors of the said Trader for valuable Consideration in Money or Money's Worth have been satisfied.

VI. In the Construction of this Act the Word "Person" shall include a Partnership Firm, a Joint Stock Company, and a Corporation.

32 & 33 VICT. CAP. 46. [A.D. 1869.]

*An Act to abolish the distinction as to priority of payment which now exists between the specialty and simple contract debts of deceased persons.*

Whereas it is expedient to abolish the distinction as to priority of payment between specialty and simple contract debts of deceased persons:

Be it therefore enacted by the Queen's most Excellent Majesty, by

and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. In the administration of the estate of every person who shall die on or after the first day of January one thousand eight hundred and seventy no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal, or is otherwise made or constituted a specialty debt; but all the creditors of such person, as well specialty as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such deceased person, whether such assets are legal or equitable, any statute or other law to the contrary notwithstanding : Provided always, that this Act shall not prejudice or affect any lien, charge, or other security which any creditor may hold or be entitled to for the payment of his debt.

#### CAP. 68.

##### *An Act for the further Amendment of the Law of Evidence.*

Whereas the discovery of truth in courts of justice has been significantly promoted by the removal of restrictions on the admissibility of witnesses, and it is expedient to amend the law of evidence with the object of still further promoting such discovery : Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. The fourth section of chapter ninety-nine of the statutes passed in the fourteenth and fifteenth years of Her present Majesty, and so much of the second section of The Evidence Amendment Act, 1853, as is contained in the words "or in any proceeding instituted in consequence of adultery," are hereby repealed.

II. The parties to any action for breach of promise of marriage shall be competent to give evidence in such action : Provided always, that no plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

III. The parties to any proceeding instituted in consequence of adultery, and the husbands and wives of such parties, shall be competent to give evidence in such proceeding : Provided that no witness in any proceeding, whether a party to the suit or not, shall be liable

to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence in the same proceeding in disproof of his or her alleged adultery.

IV. If any person called to give evidence in any court of justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following promise and declaration :

' I solemnly promise and declare that the evidence given by me to the court shall be the truth, the whole truth, and nothing but the truth.'

And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried, and convicted for perjury as if he had taken an oath.\*

37 & 38 VICT. CAP. 37. [A.D. 1874.]

*An Act to alter and amend the Law as to Appointments under powers not exclusive.*

Whereas by deeds, wills, and other instruments, powers are frequently given to appoint real and personal property amongst several objects in such manner that no one of the objects of the power can be excluded, or some one or more of the objects of the power cannot be excluded by the donee of the power from a share of such property, but without requiring a substantial share of such property to be given to each object of the power, or to each object of the power who cannot be excluded :

And whereas instruments intended to operate as executions of such powers are frequently invalid in consequence of the donee of the power appointing in favour of some one or more of the objects of the power to the exclusion of the other or others, or some other or others of such objects; and it is expedient to amend the law so as to prevent such intended appointments failing :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

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\* For a full list of Statutes bearing on the subject of Evidence, see Stephen, Dig. of the Law of Evid., Note xlviij.

and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. That no appointment, which from and after the passing of this Act shall be made in exercise of any power to appoint any property real or personal amongst several objects, shall be invalid at law or in equity on the ground that any object of such power has been altogether excluded, but every such appointment shall be valid and effectual notwithstanding that any one or more of the objects shall not thereby or in default of appointment take a share or shares of the property subject to such power.

II. Provided always, and be it enacted, that nothing in this Act contained shall prejudice or affect any provision in any deed, will, or other instrument creating any power, which shall declare the amount or the share or shares from which no object of the power shall be excluded, or some one or more object or objects of the power shall not be excluded.

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## STATUTES OF MASSACHUSETTS, 1870.

### CHAPTER 393.

#### *An Act in relation to Witnesses.*

I. No person of sufficient understanding shall be excluded from giving evidence as a witness in any proceeding, civil or criminal, in court or before a person having authority to receive evidence, except in the following cases :—

*First.* Neither husband nor wife shall be allowed to testify as to private conversation with each other.

*Second.* Neither husband nor wife shall be compelled to be a witness on any trial upon an indictment, complaint or other criminal proceeding, against the other.

*Third.* In the trial of all indictments, complaints and other proceedings against persons charged with the commission of crimes or offences, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness ; and his neglect or refusal to testify shall not create any presumption against him.

II. Nothing in this act contained shall apply to the attesting witnesses to a will or codicil.

III. The conviction of a witness of any crime may be shown, to affect his credibility.

IV. A party to a cause, who shall call the adverse party as a witness, shall be allowed the same liberty in the examination of such witness, as is now allowed upon cross-examination.

REV. STATS. MAINE. [A.D. 1871.]

CHAPTER 82.

*Witnesses and Evidences.*

§ 81. No person shall be deemed an incompetent witness on account of his religious belief, but shall be subject to the test of credibility; and any person who does not believe in the existence of a Supreme Being, shall be permitted to testify under solemn affirmation, and shall be subject to all the pains and penalties of perjury.

§ 82. No person shall be excused or excluded from being a witness in any civil suit or proceeding at law, or in equity, by reason of his interest in the event thereof as party or otherwise, except as is herein-after provided, but such interest may be shown for the purpose of affecting his credibility; and the husband or wife of either party may be a witness when either is called to testify with the consent of the other.

§ 83. No defendant shall be compelled to testify in any suit, when the cause of action implies an offence against the criminal law, on his part. If he offers himself as a witness, he waives his privilege of not criminating himself, but his testimony shall not be used in evidence against him in any criminal prosecution involving the same subject matter.

§ 84. Nothing in section eighty-two shall in any manner affect the law relating to the attestation of the execution of last wills and testaments, or of any other instrument, which by law is required to be attested.

§ 86. When one of the plaintiffs or defendants is used as a witness by the opposite party, testimony may be introduced by his co-plaintiffs, or co-defendants to contradict or discredit him, as if he was not a party to the suit.

§ 94. No person shall be incompetent to testify in any court or legal proceeding, in consequence of having been convicted of a criminal offence; but such conviction may be shown to affect his credibility.

## HILARY RULES.\*

*Adopted by the Judges of the Superior Courts of Common Law at Westminster and promulgated in Hilary Term, 4 William IV. [1833] in conformity with the Statute of 3 & 4 William IV. Cap. 42, § 1.*

## PLEADINGS IN PARTICULAR ACTIONS.

I. — *Assumpsit.*

1. In all actions of *assumpsit*, except on bills of exchange and promissory notes, the plea of *non assumpsit* shall operate only as a denial in fact of the express contract or promise alleged, or of the matters of fact from which the contract or promise alleged may be implied by law. *Ex. gr.* In an action on a warranty, the plea will operate as a denial of the fact of the warranty having been given upon the alleged consideration, but not of the breach; and in an action on a policy of insurance, of the subscription to the alleged policy by the defendant, but not of the interest, of the commencement of the risk, of the loss, or of the alleged compliance with warranties.

In actions against carriers and other bailees, for not delivering or not keeping goods safe, or not returning them on request, and in actions against agents for not accounting, the plea will operate as a denial of any express contract to the effect alleged in the declaration, and of such bailment or employment as would raise a promise in law to the effect alleged, but not of the breach.

In an action of *indebitatus assumpsit*, for goods sold and delivered, the plea of *non assumpsit* will operate as a denial of the sale and delivery in point of fact; in the like action for money had and received, it will operate as a denial both of the receipt of the money and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff.

2. In all actions upon bills of exchange and promissory notes, the plea of *non assumpsit* shall be inadmissible. In such actions,

\* *General Rules and Regulations.* — Several counts shall not be allowed, unless a distinct subject-matter of complaint is intended to be established in respect of each; nor shall several pleas, or avowries, or cognizances, be allowed, unless a distinct ground of answer or defence is intended to be established in respect of each. Therefore, counts founded on one and the same principal matter of complaint, but varied in statement, description, or circumstances only, are not to be allowed. The rule which forbids the use of several counts is not to be considered as precluding the plaintiff from alleging more breaches than one of the same contract, in the same count.

fore, a plea in denial must traverse some matter of fact; *ex. gr.*, the drawing, or making, or indorsing, or accepting, or presenting, or notice of dishonor of the bill or note.

3. In every species of *assumpsit*, all matters in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be either void or voidable in point of law, on the ground of fraud or otherwise, shall be specially pleaded; *ex. gr.*, infancy, coverture, release, payment, performance, illegality of consideration either by statute or common law, drawing, indorsing, accepting, &c., bills or notes by way of accommodation, set-off, mutual credit, unseaworthiness, misrepresentation, concealment, deviation, and various other defences, must be pleaded.

4. In actions on policies of assurance the interest of the assured may be averred thus:—"That A., B., C., & D., [or, some or one of them,] were or was interested," &c. And it may also be averred, "that the insurance was made for the use and benefit, and on the account, of the person or persons so interested."

## II.—*In Covenant and Debt.*

1. In debt on specialty or covenant, the plea of *non est factum* shall operate as a denial of the execution of the deed in point of fact only, and all other defences shall be specially pleaded, including matters which make the deed absolutely void, as well as those which make it voidable.

2. The plea of "*nil debet*" shall not be allowed in any action.

3. In actions of debt on simple contract, other than on bills of exchange and promissory notes, the defendant may plead that "he never was indebted in manner and form as in the declaration alleged," and such plea shall have the same operation as the plea of *non assumpsit* in *indebitatus assumpsit*; and all matters in confession and avoidance shall be pleaded specially as above directed in actions of *assumpsit*.

4. In other actions of debt, in which the plea of *nil debet* has been hitherto allowed, including those on bills of exchange and promissory notes, the defendant shall deny specifically some particular matter of fact alleged in the declaration, or plead specially in confession and avoidance.

## III.—*Detinue.*

The plea of *non detinet* shall operate as a denial of the detention of the goods by the defendant, but not of the plaintiff's property therein,

and no other defence than such denial shall be admissible under that plea.

#### IV.—*In Case.*

I. In actions on the case, the plea of not guilty shall operate as a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant, and not of the facts stated in the inducement, and no other defence than such denial shall be admissible under that plea: all other pleas in denial shall take issue on some particular matter of fact alleged in the declaration.

*Ex. gr.* In an action on the case for a nuisance to the occupation of a house by carrying on an offensive trade, the plea of not guilty will operate as a denial only that the defendant carried on the alleged trade in such a way as to be a nuisance to the occupation of the house, and will not operate as a denial of the plaintiff's occupation of the house. In an action on the case, for obstructing a right of way, such plea will operate as a denial of the obstruction only, and not of the plaintiff's right of way; and in an action for converting the plaintiff's goods, the conversion only, and not the plaintiff's title to the goods.

In an action of slander of the plaintiff in his office, profession or trade, the plea of not guilty will operate to the same extent precisely as at present in denial of speaking the words, of speaking them maliciously, and in the sense imputed, and with reference to the plaintiff's office, profession or trade, but it will not operate as a denial of the fact of the plaintiff holding the office or being of the profession or trade alleged. In actions for an escape, it will operate as a denial of the neglect or default of the sheriff or his officers, but not of the debt, judgment or preliminary proceedings. In this form of action against a carrier the plea of not guilty will operate as a denial of the loss or damage, but not of the receipt of the goods by the defendant as a carrier for hire, or of the purpose for which they were received.

2: All matters in confession and avoidance shall be pleaded specially, as in actions of *assumpsit*.

#### V.—*In Trespass.*

1. In actions of trespass *quare clausum fregit*, the close or place in which, &c. must be designated in the declaration by name or abutments or other description, in failure whereof the defendant may demur specially.

2. In actions of trespass *quare clausum fregit*, the plea of not

guilty shall operate as a denial that the defendant committed the trespass alleged in the place mentioned, but not as a denial of the plaintiff's possession, or right of possession of that place, which, if intended to be denied, must be traversed specially.

3. In actions of trespass *de bonis asportatis*, the plea of not guilty shall operate as a denial of the defendant having committed the trespass alleged by taking or damaging the goods mentioned, but not of the plaintiff's property therein.

4. Where, in an action of trespass *quare clausum fregit*, the defendant pleads a right of way with carriages and cattle and on foot in the same plea, and issue is taken thereon, the plea shall be taken distributively; and if a right of way with cattle, or on foot only, shall be found by the jury, a verdict shall pass for the defendant in respect of such of the trespasses proved as shall be justified by the right of way so found; and for the plaintiff in respect of such of the trespasses as shall not be so justified.

5. And where, in an action of trespass *quare clausum fregit*, the defendant pleads a right of common of pasture for divers kinds of cattle, *ex. gr.*, horses, sheep, oxen and cows, and issue is taken thereon, if a right of common for some particular kind of commonable cattle only be found by the jury, a verdict shall pass for the defendant in respect of such of the trespasses proved as shall be justified by the right of common so found; and for the plaintiff in respect of the trespasses which shall not be so justified.

6. And in all actions in which such right of way or common as aforesaid, or other similar right, is so pleaded that the allegations as to the extent of the right are capable of being construed distributively, they shall be taken distributively.

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